HARVARD CITY PLANNING STUDIES

VOLUME I: AIRPORTS

Their Location, Administration, and Legal Basis

By Henry V. Hubbard, Miller McClintock, and Frank B. Williams
Assisted by Paul Mahoney and Howard K. Menhinick

VOLUME II: BUILDING HEIGHT, BULK, AND FORM

How Zoning Can Be Used as a Protection Against
Uneconomic Types of Buildings on High-cost Land

By George B. Ford
Assisted by A. B. Randall and Leonard Cox

VOLUME III: NEIGHBORHOODS OF SMALL HOMES

Economic Density of Low-cost Housing in America and England

By Robert Whitten and Thomas Adams

VOLUME IV: URBAN LAND USES

Amounts of Land Used and Needed for Various Purposes
by Typical American Cities: An Aid to Scientific Zoning Practice

By Harland Bartholomew

VOLUME V: TRANSITION ZONING

By Arthur C. Comey

VOLUME VI: THE DESIGN OF RESIDENTIAL AREAS

Basic Considerations, Principles, and Methods

By Thomas Adams

VOLUME VII: MODEL LAWS FOR PLANNING
CITIES, COUNTIES, AND STATES

Including Zoning, Subdivision Regulation,
and Protection of Official Map

By Edward M. Bassett, Frank B. Williams,
Alfred Bettman, and Robert Whitten

VOLUME VIII: BUILDING LINES AND RESERVATIONS
FOR FUTURE STREETS

Their Establishment and Protection

By Russell Van Nest Black
Assisted by Mary Hedges Black

HARVARD CITY PLANNING STUDIES

VIII

BUILDING LINES AND RESERVATIONS FOR FUTURE STREETS

LONDON: HUMPHREY MILFORD
OXFORD UNIVERSITY PRESS

Photographs by courtesy of Floyd A. Carlson, City Plan Engineer.

EFFECTIVE OPERATION OF POLICE POWER BUILDING LINES IN THE BUSINESS DISTRICT OF KENOSHA, WISCONSIN

PLATE I.

BUILDING LINES AND RESERVATIONS FOR FUTURE STREETS

THEIR ESTABLISHMENT AND PROTECTION

BY

RUSSELL VAN NEST BLACK

ASSISTED BY

MARY HEDGES BLACK

CAMBRIDGE
HARVARD UNIVERSITY PRESS
1935

PRINTED IN THE UNITED STATES OF AMERICA

PREFACE

Knowledge of the various aspects and elements of city planning does not advance logically and at an even pace over the whole field. Rather it moves irregularly, and facts and theories are brought down to details where they happen to be most needed at the moment. In this way — at least provisionally, for practical use — definite city planning conceptions as to parks, zoning, public acquisition of land, and immediate traffic relief have been already set up and accepted.

At the moment there is forced upon us a very significant problem, — that of building lines. That it has not yet been fully solved is made all the more evident by other recent gains in clarity of thought. It is not essentially new. The authors of *Model Laws for Planning Cities, Counties, and States,* and many other previous writers, recognized that in this matter we were proceeding without any really sufficient knowledge of present diverse and sporadic experience, and thus without a sound basis for constructive theory.

This situation is caused by the interval of time which normally exists between the acceptance by a community of a plan which involves the public acquisition of land, and the actual complete acquisition of this land. We are unable to assure the plan's being carried out, because, during this interval, its eventual realization may be hampered, intentionally or accidentally, by private constructions for which their owners are legally entitled to compensation.

It is to be noted that this time interval between planned purpose and land acquisition is inevitable, indeed it is a part of the plan, since no city can or should waste the public funds and the interim land use by immediate acquisition of all the land required for ultimate public development.

Some solution of the problem is imperative, and apparently it is to be sought by considering what rights in land the city may desirably take, short of taking the whole plexus of rights which we call land ownership.

This report confines itself to the ways of "protecting" future streets and street widenings; and since *buildings* are the private constructions which usually most hamper subsequent street developments, *building lines*, the central subject of this report, are the normal protection sought.

THEODORA KIMBALL HUBBARD
Editor of Research

HENRY VINCENT HUBBARD
Chairman

HARVARD UNIVERSITY
SCHOOL OF CITY PLANNING
April 23, 1935

CONTENTS

CHAPTER I

CHAPTER II

CHAPTER III

CHAPTER IV

CHAPTER V

CHAPTER VI

CHAPTER VII

APPENDIX I

APPENDIX II

APPENDIX III

> In authorizing an extension beyond the building line on a thoroughfare in a business district, the board has invariably limited the portion built beyond the building line to one story in height and has required, as a condition, that an agreement be executed and filed binding the owner to remove such portion beyond the building line at his own expense if and when the conditions on account of which the exception was made cease to exist.[1]

A typical agreement to waive damages is given in the Appendix on pages 228–229.

With only 229 appeals for variance in ten years, the effectiveness of the building line procedure in Akron can hardly be doubted. The procedure has come to be accepted by the community as a wise public policy and as indeed promoting the general welfare. Economically, the building lines so established have saved the city a great deal of money, although it is true that they were established only incidentally for that purpose. A more detailed discussion of the savings incident to the establishment of building lines will be found on page 141. Total savings are reported to have amounted to more than $4,000,000 up to July, 1933.

Kenosha, Wis. A comprehensive city plan was prepared for Kenosha under the authority of the state enabling act,[2] which provides for the adoption of a comprehensive city plan and the carrying out of such a plan by street widening, establishment of setback or building lines, excess condemnation, benefit assessments, etc., and in addition, authorizes zoning.[3]

After comprehensive surveys and studies of Kenosha's existing facilities and future needs, a plan was made. The public was informed of its purposes and hearings were held, after which the plan was adopted by city council. This plan showed a major street system for the city and included a zoning ordinance. The major street system as established by the city plan laid down the ultimate new widths needed as well as defining future street locations. To quote Mr. William E. O'Brien, formerly City Manager of Kenosha:

> If after the adoption of the major street plan new structures were allowed to be erected at the old street line it would eliminate the possibility of ever increasing the width of the street, due to the pro-

[1] *Op. cit.*, p. 15.

[2] Wis. Stat. (1927) § 62.23.

[3] The validity of the zoning ordinance under this act was sustained by the Supreme Court in State *ex. rel.* Carter *v.* Harper, 182 Wis. 148, 196 N. W. 451, 33 A. L. R. 209 (1923).

hibitive cost of widening. This would defeat or nullify the purpose of the major street plan.[1]

To prevent this unhappy result the city carried on an intensive educational campaign with particular regard to the major street system and the zoning ordinance. As an immediate effect, many property owners willingly set back new structures to provide the additional street widths laid down in the plan. Other property owners, however, for various reasons refused to set back, and in these cases the city felt obliged to buy, lease, and bargain, in order to maintain the setback lines. This condition was not, of course, satisfactory, and search was undertaken for a more uniform procedure which would give some assurance of being a continuing process. In studying the problem the city attorney became convinced of the legality of the use of the zoning ordinance for establishment of building lines and suggested a procedure subsequently adopted by city council.

To summarize further from the above paper, the proposal as adopted may be outlined briefly as follows:

(1) Complete and thorough study of the needs and requirements of the major streets

(2) Inclusion in the zoning ordinance of three major items
   a. Definition of a major street
   b. Description of the proposed new center line of each major street
   c. Statement of the setback from the center line required to obtain the proper width for each major street

Furthermore, under subdivision control regulations, building lines are required to be shown on plats for record within three miles beyond the city limits in order to secure the same results as though the zoning ordinance were in effect.

The building inspector is responsible for preventing any infringements of the setback lines. The general procedure is the same as that of Akron, except that in Kenosha, after issuance of a permit by the building inspector, the city engineer definitely establishes the street and building line on the ground for each individual builder. The building is checked by the building inspector during process of construction for conformity to the line so established. Appeal from the decisions of the building inspector is to the board of appeals.

[1] In "The City Plan of Kenosha, Wisconsin," a paper presented to the 59th Convention of the American Society of Civil Engineers, July, 1929.

LIST OF ILLUSTRATIONS

PLATES

FIGURES

LIST OF TABLES

ACKNOWLEDGMENTS

Without the generous and patient assistance of the planners and planning administrators and others listed in Appendix V, little progress could have been made with a study of this kind. To them the author extends his thanks and appreciation, with regret that space does not permit enumeration of individual aids so freely given.

We are especially indebted to Mr. Alfred Bettman for his suggestions during final adjustment of the manuscript; to Miss Katherine McNamara, Librarian of the Harvard Schools of Landscape Architecture and City Planning, for preparing the bibliography and for making needed references available; and to the Editors for their many helpful suggestions and for their patience throughout the course of study and of preparation of this report.

R. V. B.

BUILDING LINES AND RESERVATIONS FOR FUTURE STREETS

By

Russell Van Nest Black

Assisted by Mary Hedges Black

CHAPTER I

PURPOSE AND SCOPE OF RESEARCH

THE establishment and protection of reservations for future streets and future widenings of streets comprise an increasingly important necessity for many cities. There is scarcely a city or town in this country that is not more or less seriously concerned with the problems of adapting its eighteenth- or nineteenth-century street system to twentieth-century conditions through some method of remodeling and adjusting old street patterns and old street widths with a minimum of destruction and at reasonable cost. The consequences of the general lack of foresight in the laying out of these old street systems bespeak the importance and necessity of avoiding the same errors, in so far as may be possible, in new city building. To a lesser extent, perhaps, the same necessity faces county and state administrators.

The need for some equitable solution is recognized. Beyond that, progress has been slow, largely because of new questions raised, or old questions revived, as to the proper relation between individual and community rights, or between private and public welfare. These questions relate to two quite different actions and conditions. The first is the outright taking of property, whether land or buildings, for community or public purposes, — in this instance, for new streets or for street widenings. The second is the public control of private development and private building operations with a view to avoiding, in the case of new streets and street widening projects, the prohibitive cost of damages to buildings and other obstructions placed within street reservations subsequent to street mapping. This latter action assumes deferment of taking and occupation of land or property until actually needed.

With respect to the first action, there is little question as to the obligations of the community. Land taken for public occupation must be paid for at a price arranged by agreement or by court or jury award. When, however, as in action two, the community seeks merely to control or to limit the use of land, with or without assurance of ultimate taking and occupation, there arise questions and the possibility of varying interpretations as to the extent of the rights of the community. The cost of extensive application of action one is prohibitive, thereby compelling clarification of the possibilities and limitations of action two. This

clarification is gradually evolving from the tedious accumulation of experience.

Faced with desperately crowded conditions on the one hand and with incapacity immediately to finance extensive remodeling of streets on the other, cities are turning to the only possible solution: gradual preparation against a time when greater street capacity will be imperative, so that the cost of alterations and improvements may be kept from becoming prohibitive. This opens a relatively new field to planners and to administrators. Widely different methods of approach are being employed throughout the country with varying degrees of success. Variation in approach and in methods, natural to so broad a country with such diversified interests and traditions, is intensified by variations in enabling legislation and in court interpretation of the bugaboo question as to what constitutes "the taking of property without due process of law." There is variation between regions, between states, and within states.

There is no question as to the importance of this comparatively new development in city planning and plan administration.[1] Discussion of it is timely because of the present stress upon the necessity of wiser use of public funds, both now and in future years. Several methods of control have already been in operation in various parts of the country long enough to permit the accumulation of a considerable body of experience and to suggest that there may be something to be gained by a careful summary and analysis of this experience. Such a summary and analysis are the objects of this study and this report. It is hoped that out of them may emerge a clear picture of present trends and resulting suggestions as to best procedures.

Perhaps it should be said at the beginning that this presentation is not to be taken as an argument for or against street widening. It is merely an attempt to discover and portray the results of some years of experience with the various methods being used to protect community interests by making possible economical street widening where and when needed. It is the opinion of the writer that the need for and benefit to be derived from street widening projects have frequently been exaggerated. But there can be no question that much street widening is well justified. To determine when such operations are or are not justified or desirable is outside the scope of this report.

Study has been limited to experience in the United States. Controls corresponding to many of those now desired to be established here have

[1] See p. 8.

long been in operation in other countries, but, because of the dissimilarity of backgrounds, foreign experience can have little direct application in the United States. Neither have time nor available funds permitted extending the search for material beyond this country. Effort has been made, however, to cover every city and county in the United States reported to have had special experience in this field and, in addition, other selected cities and counties where it has seemed possible that valuable material might be found.

The inquiry was initiated by a questionnaire sent to the administrators of 165 selected cities and counties. Another questionnaire was sent to planning practitioners. Ninety replies, representing that number of cities and counties in 37 states, were received from the first questionnaire. Approximately 90 per cent of the cities and counties responding indicated more or less experience with the establishment and protection of building lines or of reservations for future streets, or of both. The extent to which these forms of control have been disregarded in otherwise relatively progressive cities is indicated by the fact that more than 10 per cent of the replies received showed failure to comprehend what was meant by either of the terms, "mapped streets" or "building lines." This, of course, might be explained by failure of the questionnaire properly to define these terms or by the confusion resulting from their varied use, except for the interesting fact that, in practically every such instance, follow-up showed that no procedures of a corresponding nature were being used in these cities.

Questionnaires were followed by field visits to most of those cities indicating valuable experience and were further checked by correspondence continued to the point of clarification of all uncertainties as to the use of terms and the nature of local procedure. Many were the high hopes that went glimmering upon discovery of misuse of terms. Special effort was made, through questionnaires to planners and administrators and through later correspondence with them, to determine: (*a*) weaknesses in present methods, (*b*) methods most promising and most successful, and (*c*) possible improvements in procedure and in enabling legislation. All available literature was reviewed. (Incidentally, there is very little.) Enabling legislation of the several states was studied in relation to methods employed and results obtained in each state; and special effort was made to compile and analyze all court decisions having direct bearing upon the subject. Doubtless some instances of valuable experience have gone unobserved, and much material which would have been worth while

must have been overlooked. But we believe that the field has been sufficiently explored to permit an accurate picturing of the present status of building line and mapped street control in the United States, together with a fair statement of the problems involved and the now evident trends.

As study proceeded to the point of summarization and of placing observations and conclusions on paper, it became increasingly apparent that there would have to be a clear statement and perhaps some restatement of terms, and that this in itself might be a contribution. There appears to be no common usage or understanding of either of the terms, "building lines" or "mapped streets." This confusion is not limited to the several kinds of building lines. "Mapped street" is frequently used to apply to any street shown on a map, regardless of its physical status. This report is concerned not with existing streets but with reservations for future streets and future widenings of streets. Some cities and states make no distinction between building lines establishing an easement for the protection of a future widening and the lines of a future or mapped street. There is, in fact, little or no fundamental distinction between such building lines and mapped street lines. However, not all "building lines" are "mapped street" lines. It seems that there is needed, therefore, at least for the purposes of this report, either a definition or a new term for "mapped streets" and a definition and delimitation of the term, "building lines." "Mapped streets," in the sense here intended, refer to future streets whose locations are indicated on a map but which are not yet open or occupied for street purposes, or in public ownership. They are in effect "street reservations" and will frequently be referred to as such in the following discussion.

Building lines establishing an easement for a future street widening do in effect define a mapped street or street reservation and, in fact, cannot be differentiated, except by arbitrary definition, from lines establishing a new street. This applies whether such lines are established and maintained under the police power or under eminent domain. In subsequent discussion, therefore, no distinction will be made between such building lines and lines establishing mapped streets or street reservations except as may be necessary to clarify usage of the terms in local ordinances and procedure and in the various enabling acts. Other kinds of building lines, including those established primarily for the purpose of preserving front yards, whether contractual lines placed on subdivision plats, or those defined by land contract (*i.e.*, private deed restrictions), or front yard lines established under zoning, will be discussed from the point of view of

their relation to building lines established in anticipation of street widening, but they are not a direct concern of this report. It is further to be remarked that street reservation lines establishing an easement for street widening purposes are not necessarily building lines. Actual building lines for preserving front yards may be established beyond widening lines to assure adequate front yards after widening has been carried out.

Street reservation lines, whether for new streets or for street widenings, may be classified roughly according to the source of their establishing authority: the police power or eminent domain. More or less limited use of the police power in the establishment and protection of new street reservations seems now to be generally accepted as legitimate. With respect to the use of police power in the establishment and protection of street widening reservations there appear to remain two schools of thought: one holding this use of the police power to be entirely proper and quite consistent with other established uses of this power; the other maintaining that the police power may not be so used and that this function of government may be performed only under eminent domain. The controversy arising from this difference of opinion and the present status of these two approaches will be made the subject of Chapter IV. It may be said here, however, that the successful use of reservation lines in scattered cities throughout the country appears to indicate that the police power method is gaining ground rapidly and that the use of eminent domain is gradually falling into disfavor because its excessive cost prevents its use to an extent sufficient to protect community interests.

The terms "mapped street" and "mapped street reservation" should perhaps be further clarified in respect to what constitutes street mapping. For the purposes of this study and report, street mapping is regarded as an evolutionary process, and consideration is given to each of its several stages. By narrow definition, it may be said that a street or street reservation is not mapped until its location has been accurately determined and until such street in such location has been established officially by legislative or administrative act. This, in fact, is merely the ultimate stage in the evolution of street mapping, and, were the protection of future street and highway locations limited to the preservation of locations so established, comparatively little would be accomplished under present planning procedure in the way of guiding and protecting the expansion of street and highway systems.

A street reservation may be indicated diagrammatically as to location, or it may be located exactly, with dimensions scaled to any desired degree

of accuracy. Its ultimate realization may be assured by some form of platting control or by administrative enactment and procedure guarding against all intrusions. It is true that, while in the diagrammatic stage and having merely general location, only the essential function of a street reservation can be protected. Without knowledge as to the exact location of street lines, it is of course often impossible to prevent the encroachment of buildings upon the rights of way of future streets at their intersection with improved streets. But in the interior areas of undeveloped land, such diagrammatic streets can be protected and their function preserved by requiring their recognition at the time of subdivision.

From this point of view, all general planning laws and their administration and all administration of platting control become important in any discussion of the establishment and protection of street reservations. Building lines, however, by their very nature must be exact as to location and thus play no part in the administration and preservation of general plans except in so far as they may be specified by general rule or policy, incidental to platting control.

Earlier in this chapter, the establishment and protection of building lines and mapped streets as a function of government are spoken of as a comparatively new development. It should be explained that it is the present phase of their application that is new rather than the principle they represent. The early regulations of several of the original Thirteen Colonies included police power laws providing for the mapping of future streets and for the protection of the beds of these streets against the intrusion of buildings and other obstructions. Among the Colonies enacting such laws were Pennsylvania, Virginia, Massachusetts, and New York. The mapped street law of Pennsylvania, modified by reënactment and amendment, is probably the only direct survivor of these early statutes, although others of the above states now have mapped street laws of one sort or another gained through more recent enactment.

Building line legislation of the New England type, providing for the acquisition of easements through varied procedures under eminent domain, appears to have been the next step in this field. The early building line laws were designed primarily to preserve front yards in residential districts, and that largely for esthetic reasons. At the time of their enactment no horseless carriage, with its undreamed-of traffic demands, had appeared upon the horizon. There was no hint of future need for wider streets. Regardless of original purpose, however, these old building lines and the public easements acquired by their creation

have proved to be aids to low-cost street widening, especially in those instances where they have held through the years against the spread of business into what were once residential districts.

Measures for the control of mapped streets declined after the early enactments by the original Colonies. One by one, these first laws, with the exception of that of Pennsylvania, faded out of existence or were forced out by adverse court decisions. Nothing came to take their place until the first examples of present-day planning legislation appeared on the statute books of scattered states. With these first planning laws, some of them still in operation, the reader is probably familiar. The only protection of street reservations afforded by them was that gained through platting control, that is, through the authority vested in planning commissions to dictate the location and widths of new streets shown on subdivision plats as one of the conditions of required plat approval. Even here the loophole of subdivision by metes and bounds was usually wide open to the recalcitrant land developer. There followed, through legislative amendments and through various local devices, efforts to close this loophole which met with varying degrees of success. In rapid steps, planning legislation (and therefore street reservation protection) has developed through the stages of general plan to master plan and finally to that of an official map or plan, as suggested by the Standard City Planning Enabling Act,[1] and as provided in the present enabling acts of New York, New Jersey, and several other states. These modern official map acts usually assume the broader definition of mapped streets as including reservations both for new streets and street widenings. The operation of the several forms of planning laws, in their bearing upon the establishment and control of street reservations, is the subject of the next chapter.

As suggested above, the earlier specific building line legislation appears to have been directed almost exclusively toward the preservation of front yards, largely for esthetic reasons. Under these laws front yard easements were obtained either under eminent domain, with the balancing of damage against benefit and declaration of award, or by agreement with frontage owners often upon their own initiative. Other front yard building lines were the result of contractual agreements between land developer and lot purchaser, such agreement running with the deed usually for a

[1] Prepared by the Advisory Committee on City Planning and Zoning of the United States Department of Commerce. Washington, Government Printing Office, 1928. This Act will hereafter be referred to as the Standard Planning Act.

limited period of years. These several methods of front yard establishment gradually gave way upon the advent of zoning and have fallen almost completely into disuse in many localities. The contractual building line, however, continues to be of value where building setbacks of unusual depth are desired for architectural or landscape effect.

Zoning introduced the establishment and protection of building lines under the police power (except in so far as such previous procedures as that of Pennsylvania under its mapped street law might be regarded as being so based), with application limited exclusively at first to the maintenance of building alignment and the preservation of front yards in residential neighborhoods, and with justification based upon the contention that the assurance of liberal open space between rows of residences promoted "public health, safety, morals, and general welfare." During the early years of zoning and throughout the struggle to establish the principle of zoning as a constitutional right of government, front yard building lines were among those features most subject to contention and attack. Gradually there developed an increasingly strong array of favorable court decisions, finally forming so strong a body of precedent that the authority to lay down front yard building lines through zoning, and thus the police power, appears to be firmly established. Now comes the effort to extend zoning and the police power to the establishment and protection of building lines for the avowed purpose of holding the way clear for ultimate street widenings, based upon the contention that this purpose frequently bears the same relation to "public health, safety, morals, and general welfare" as do other features of zoning and other uses of the police power, and upon the further contention that this in principle no more comprises "the taking of land without due process of law" than do many of the other well-established applications of zoning.

This brief history of building line and mapped street legislation and of general progress in this field is merely by way of introduction to the following more detailed discussion of the present status and operation of these controls, as evidenced by the varying practice and experience of a great number of cities and counties widely scattered over the United States. In making this presentation, emphasis will be placed, so far as possible, upon the giving of facts rather than the drawing of conclusions. The writer feels, however, that this work will not have served its full purpose if, out of the maze of conflicting procedures, experiences, and opinions, there are not drawn some clear conclusions of definite help to cities and other governmental agencies now struggling with this problem.

CHAPTER II

LEGISLATIVE AND ADMINISTRATIVE ASPECTS OF BUILDING LINES AND STREET RESERVATIONS

LITTLE advance can be made in the study of the establishment and protection of building lines and street reservations except, first, by review and analysis of the enabling legislation from which the several procedures are derived and by which the extent and limitations of authority are determined. The writer does not presume to be qualified by professional training or experience to make a thorough legal survey of the field, nor would the limited time at his disposal permit of such a survey if he were qualified to make it. It is with some apology, therefore, that the following discussion of building line and mapped street authority in this and subsequent chapters is offered. The legally minded may find faults in phraseology and occasionally, perhaps, failure properly to interpret intent. The thorough student of planning legislation may discover important omissions. But, while regretting all such errors and omissions, the writer feels that the purposes of this study will be adequately served if he can trace the progress and trends of legislative principles as applied to the subject in hand and if he can place before the reader a clear statement of the legislative authority upon which each of the several methods of establishing and protecting building lines and street reservations is based. In having accomplished this much the writer has some confidence.

As suggested in the previous chapter, building lines fall into two general classes: those establishing front yards and those defining the boundaries of street reservations. Street reservations include both streets mapped but not physically developed or legally occupied by the public, and, in the case of existing streets, the reservations or easements defined by the latter class of building lines. Both building lines and street reservations may again be classified according to the manner of their establishment and protection, *i.e.*, whether under the police power or under eminent domain. There are varying degrees of application of both police power and eminent domain represented by the several state enabling acts and by established practice under them. In some instances there appears to be a close intermingling of the two authorities. The several types of building lines and street reservations and the methods used in their establishment and protection are made fairly clear by analy-

sis of state enabling acts, but, as suggested above, there is considerable variation in local application of many of these acts, sometimes growing out of differences in interpretation of the enabling authority but, more often perhaps, indicating varying degrees of courage, ingenuity, and progressiveness upon the part of local administrators.

There follows a brief analysis of the several general types of state enabling acts. Local application of these acts and observed variations will be discussed in Chapter III.

Police Power Acts

GENERAL PLANNING ENABLING ACTS

Almost without exception, planning enabling acts, so far as the administrative functions of the planning commission are concerned, are based upon the police power. In one or two instances, notably the Standard Planning Act and the state laws following it in this respect, certain steps in establishing the official map are carried out under eminent domain.[1] Some states make the establishment and protection of building lines subject to special and supplementary legislation under eminent domain. In practice at least, the use of the police power and the use of eminent domain in state enabling legislation for the establishment of building lines and the protection of street reservations are not mutually exclusive. Many of the states in which studies were made, notably California, Texas, Tennessee, and Minnesota, have laws providing specific procedure for establishment of building lines for street widening purposes under eminent domain. Only one city in these four states was discovered to be making use of such eminent domain procedure, however, while many cities of the same states were proceeding, with varying success, under the police power.

With the above exceptions, general planning acts may be grouped roughly into three classes, all operating under the police power, but varying in the extent of their use of this power. These three classes are as follows:

(1) *Acts authorizing the making of general or master plans without providing specifically for their protection or for the control of land subdivision.* Upon plans prepared under such acts, reservations for future streets are shown diagrammatically, in approximate location, and are almost entirely

[1] The actual term "official map" is not used in the Standard Planning Act, but see its "Title III — Buildings in Mapped Streets," especially Section 22.

TABLE I

STATES HAVING POLICE POWER LAWS FOR THE ESTABLISHMENT AND PROTECTION OF BUILDING LINES

State	Law	Application
Delaware	Laws 1887, c. 188	Wilmington
Illinois	Laws 1933, p. 218 (H. B. No. 938)	Cities, villages, and incorporated towns
	Laws 1933, p. 421 (H. B. No. 939)	Counties
Iowa	Code (1924), §§ 5757–5758	First and second class cities
Kentucky	* Acts 1930, c. 86	First class cities
Maryland	* Laws 1933, c. 584	Baltimore
	* Laws 1933, c. 599	Municipalities
Massachusetts	Gen. Laws (1932), c. 143, § 3	Cities and towns except Boston
New Jersey	Laws 1912, c. 405, § 47	Second class cities
	* Laws 1930, c. 235, § 15	Municipalities
New York	* Laws 1926, c. 690	Cities
	* Laws 1926, c. 719	Villages
	* Laws 1927, c. 175	Towns
Pennsylvania	Laws 1782, § 19441, as amended by: Laws 1855, No. 281; Laws 1871, No. 1258; Laws 1872, No. 1247; etc.	Philadelphia
	* Laws 1891, No. 59, many times amended	Municipalities
	Laws 1923, No. 81	Third class cities
	* Laws 1931, No. 317	Third class cities
	Laws 1927, No. 336: Art. XII, § 1202, ¶ xxv; Art. XVI, §§ 1660–1665	Boroughs
	Laws 1921, No. 295	Municipalities
	Laws 1931, No. 331, Art. XX, § 2001	First class townships
	Laws 1921, No. 62, as amended by Laws 1929, No. 580	State highways
	Laws 1925, No. 382	State highways
Virginia	Laws 1932, c. 280 (Charter of Alexandria), chap. VIII	Alexandria
Wisconsin	Stats. (1931), § 80.64	Highways of counties of more than 150,000 population

* General planning enabling act.

dependent for preservation upon the coöperation of land developers and upon the sympathy and coöperation of the administrative body. These represent a rather crude and obsolete form of enabling legislation, helpful in focusing attention upon the possibilities and requirements of growth and capable of considerable accomplishment under the right kind of administration, but failing to provide any really effective control.

The county planning legislation of some states, notably New Jersey, is drawn upon similar lines. The very general New Jersey provisions for county planning are as follows:

> Every board of chosen freeholders shall have power to prepare and adopt a plan for the betterment and the systematic development of the county, and shall have power and authority to employ experts and to pay for their services, and to pay such other expenses as may be necessary for the making of such plan.
>
> Every board of chosen freeholders may, by resolution, provide for the establishment of a commission consisting of not more than seven citizens of such county to act as a county plan commission. Such commission, if established, shall have all the power and authority conferred upon boards of chosen freeholders by this article, except that the said commission may expend only such sums as may be appropriated for such purpose by the board of chosen freeholders.
>
> Every board of chosen freeholders adopting any such plan, or any county plan commission appointed hereunder, shall endeavor to cause all municipalities within the county, and adjoining it, to co-operate in the laying out of roads and boulevards and in the betterment and the systematic development of the county.[1]

(2) *Acts authorizing the making of general or master plans with provision for subdivision control and placing a measure of restriction upon acts of the legislative body.* These acts vary somewhat in the official status given to plans prepared under them and in the extent of territory falling under the land platting jurisdiction of the planning commission. In some states the general or master plan provided for by enabling act appears to take on some of the characteristics of the official map discussed under the following heading. In other instances the integrity of the plan is preserved only through the subdivision control activities of the planning commission and by the requirement of a two-thirds or three-fourths vote of council in the case of action contrary to the recommendations of the planning commission. Extent of territorial jurisdiction of platting control varies from merely the corporate municipal area to the

[1] N. J. Laws 1918, c. 185, p. 617.

territory within from one to five miles, or even farther, beyond the municipal boundaries.

Under this type of legislation mapped streets or street reservations are shown in general location, and usually no provision is made for the adoption of an "official map" as described below. In some instances the plan is termed "the master plan" but more often is identified as "the general city or county plan." Future street locations are preserved, as suggested above, by varying limitations upon the action of the legislative body in cases of proposals contrary to recommendations of the planning commission, and by requiring the location of streets in accordance with the plan as a primary condition of approval of land subdivision plats. In certain instances, platting control is reënforced by special clauses or by supplementary legislation designed to prevent land subdivision by metes and bounds.

Such enabling acts make no direct provision for building lines, either those establishing street reservations or those creating front yards. Some states operating under this type of legislation have supplementary laws making one provision or another for the establishment of building lines for street reservations. Front yards in residential districts are assured either by zoning or incidentally to platting control or in both ways. Building lines which are essentially street reservation lines are sometimes established under both zoning and platting control procedures.

The experience of many cities indicates that wise administration of platting control authority, based upon a good general or master plan, can be, and frequently is, very effective in protecting the location of future streets and highways and in obtaining the desired widths for new streets passing through territory undergoing development. This procedure is equally effective in obtaining wider rights of way for existing roads abutting upon or passing through new land subdivisions, except as stated below. The only serious loophole in this control is the possibility of subdivision by metes and bounds, but this can be prevented in considerable degree by putting teeth in legislation and by judicious and tactful administration. Individual cities have made apparently successful attempts to block "outlaw" subdivisions by such a measure as refusal to render public services to structures within such developments. Subdivision control, however, does not prevent encroachment upon mapped street reservations at street intersections or at other points where improved street frontage may already be accessible, and, therefore, beyond the stage of operation of subdivision control machinery. So far as new

street reservation is concerned, this failure usually is not serious, but, pending subdivision of abutting lands, it leaves high and dry the protection of planned highway widenings, hoped ultimately to be accomplished as an incident to the approval of abutting land developments.

Experience indicates that the effectiveness of results obtained under enabling acts of this sort depends very largely upon administrative wisdom, tact, and ingenuity. All through planning administration, under whatever authority, the potential force of education and moral suasion is demonstrated. More can be accomplished by good administration of deficient powers than by bad administration of full powers.

The above method of protecting street reservations through subdivision control represents the second step in modern planning legislation. It is often found in city planning enabling acts passed during the few years preceding the publication of the Standard Planning Act, including those of Illinois, Indiana, Iowa, Kansas, Michigan, Nebraska, North Carolina, Ohio, Oklahoma, Tennessee, Texas, and Wisconsin. The Standard Act was followed by a series of new acts modeled in general upon its provisions and described under the next heading.

(3) *Acts authorizing the making and adoption of master plans and official maps, providing for the protection thereof, and including provisions for land subdivision control.* These acts provide for two stages in plan making and adoption represented by what are termed "the master plan" and "the official map."

The master plan, in its character, the manner of its making, its statutory authorization, and its administration, is similar to or identical with the general or master plan made and established under the second type of acts. It is essentially a guide plan, administered solely by the planning commission. It is protected by the authority vested in the planning commission to regulate land subdivision activities, by the provision that all plan projects proposed to be executed by the legislative body shall be submitted to the planning commission for report, and by the requirement of a two-thirds or three-quarters vote of the legislative body in cases of unfavorable report upon such projects by the planning commission. The master plan is not subject to official adoption by the legislative body through either ordinance or resolution.

The official map represents the official or final stage of plan. It includes existing public properties and open spaces and, in addition, such projects as may be selected from the master plan for official adoption. In some instances the force of the official map in the protection of plan

projects is limited to streets and highways and street and highway widenings. The official map is adopted by the legislative body by ordinance after public hearings. It may subsequently be added to or taken from by the legislative body, again by ordinance, after public hearings and after reference to and report from the planning commission. The official map may include all or part of the master plan recommendations. It is enforceable under the police power and gives a legal status to the land within street lines amounting virtually to easement. By its very nature and the provisions for its enforcement, the official map presupposes the definite and exact location of project boundaries, including the lines of projected new streets and street widenings. Arbitrary operation is minimized by provision for a board of appeals with authority to grant exceptions or to "bargain" in cases of demonstrated undue hardship.

The street and highway proposals of most official maps adopted to date are limited to main and secondary street and highway projects. In rare instances the official map has been extended to include a complete street pattern for all undeveloped land within the probable growth range of the city.

The Standard Planning Act places its procedure for the prevention of building in the bed of mapped streets under eminent domain, and a similar provision was included in the proposed legislation for Massachusetts known as the Nichols bill. Except for the California act discussed below,[1] however, such eminent domain legislation has not yet been placed in operation, although it has been adopted by several states, including Colorado, North Dakota, Arkansas, and Maryland (for the city of Frederick only).

Establishment and protection of reservations both for future streets and street widenings appear to be adequately provided for under these official map acts. However, none of these acts has been in operation long enough to permit of thorough testing either in practice or in the courts; furthermore, it remains to be seen whether or not, as in zoning, boards of appeals may not tend to nullify the effectiveness of the official map through too great leniency and through too broad an interpretation as to what comprises "undue hardship." Whatever its weaknesses, however, this method of establishing and protecting mapped street reservations, with the possible exception of the long-established procedure in Pennsylvania,[2] probably represents the most advanced stage of plan and plan control now in operation.

[1] See pp. 24–26.

[2] See pp. 72–80.

The following states have enabling acts of this third type, using either eminent domain or police power procedure: Arkansas, California, Colorado, Kentucky (for Louisville only), Maryland, New Jersey, New York, North Dakota, Pennsylvania, and Virginia.

Typical clauses from the California, New Jersey, New York, and Pennsylvania acts will be found in the Appendix.[1]

RECENT PROPOSALS IN MODEL ACTS

The model planning laws recently published by the Harvard School of City Planning include several that have a distinct bearing on the problem in hand.[2] These are: the form of municipal planning enabling act drawn up by Messrs. Bassett and Williams; the act for the same purpose drawn up by Mr. Bettman; and a model act, also by Mr. Bettman, specifically directed to the prevention of building within the lines of future streets. Mr. Whitten, the fourth contributor to the volume, accepts in general Mr. Bettman's proposals but in his report recommends that some of them be carried still further, presenting two model clauses that embody his ideas where they diverge from Mr. Bettman's. All these writers base their acts on the police power, but, on questions of method in applying it, they differ slightly from each other as well as from the alternative police power provision incorporated in note 122 to the Standard Planning Act.

The Standard Act and the model acts suggested by Messrs. Bassett and Williams and by Mr. Bettman all provide for the making and adoption of a master plan by the planning commission and the adoption of an official map or plat by the legislative body subsequent to the adoption of the master plan. Mr. Whitten would combine zoning and planning enabling provisions in one act and recommends that among the powers of any municipal council shall be the power to regulate and restrict

> . . . the setback of buildings along streets, highways, parks, or public waters; the subdivision and development of land; the erection of buildings within the lines of streets, highways, or parks shown on an official map; and the erection of buildings on lots abutting on unapproved streets.
>
> For the purpose of any such regulations such council may divide the municipality or any portion thereof into districts of such number,

[1] See pp. 187–191, 196–200, 200–205, 206–212.

[2] Edward M. Bassett, Frank B. Williams, Alfred Bettman, and Robert Whitten, *Model Laws for Planning Cities, Counties, and States.* Cambridge, Harvard University Press, 1935. (Harvard City Planning Studies, VII.)

shape, and area, or may establish such official map or maps or development plans of the whole or any portion of the area of such municipality, as may be deemed best suited to carry out the purposes of this Act.[1]

The Standard Planning Act does not make as clear a distinction between the master plan and official map as do Messrs. Bassett, Williams, and Bettman. In the Standard Act the master plan becomes, or has the effect of, an official plan or map under certain conditions.[2] In the model act of Messrs. Bassett and Williams, the master plan and official map are entirely different in their legal status: the official map, which must be adopted by the legislative body, is precise and binding upon the municipality, while the master plan functions as a comprehensive but unofficial guide plan for future development. Mr. Bettman makes a similar distinction, but gives the master plan a rather more explicit legal status, requiring that it be adopted by the planning commission and that thereafter it may be departed from only after a two-thirds or three-fourths vote of council.

The act proposed by Messrs. Bassett and Williams provides that an official map of all or part of the area of a municipality shall be first adopted as a map of existing conditions. Mr. Bettman's Mapped-streets Act provides that the official map as first adopted "may also show the location of the lines of streets on plats of subdivisions which have been approved by the planning commission of the municipality" and, in addition, may show "the location of the lines of private streets on plats of subdivisions which, previous to the establishment of the official map, shall have been approved under and in accordance with" the legal requirements then in force, even though such streets have not become public streets at the time of adoption of the official map. Both of the above-mentioned acts provide that plats or plans showing precise future street locations, street widenings, etc., are to be adopted as amendments to the official map. Mr. Whitten does not explicitly specify the adoption of an "as is" map as the official map before the adoption of proposed additions or changes to such map.

All of these model acts provide for the holding of public hearings on proposed amendments to the official map with notice to be published a varying number of days in advance of such hearings. All require submission of proposed changes to the planning commission for report thereon before adoption by the legislative body. In the event of disapproval

[1] *Op. cit.*, p. 124.

[2] See Sections 9, 18, 19, and 21. Section 21 is reproduced in the Appendix, pp. 177–178.

by the planning commission, the vote of the legislative body required to override such disapproval ranges from two-thirds, as specified in the Standard Planning Act, through two-thirds or three-fourths in the act proposed by Mr. Bettman, to the four-fifths or unanimous vote recommended by Mr. Whitten. Under the act proposed by Messrs. Bassett and Williams, however, the disapproval of the planning commission has no legal effect upon the actions of the legislative body.

The act proposed by Messrs. Bassett and Williams provides that:

> The locating, widening, or closing, or the approval of the locating, widening, or closing of streets, highways, freeways, or parks by the municipality under provisions of law other than those contained in this Act shall be deemed to be a change or addition to the official map, and shall be subject to all the provisions of this Act.[1]

The Standard Planning Act and the planning act proposed by Messrs. Bassett and Williams provide directly that no permit shall be issued for any building on any part of the land between the lines of a proposed street adopted as a part of an official map, except as provided by the act. Under Mr. Bettman's proposal, operation of this control is dependent upon enactment of a general ordinance by council to this effect. In other words, the adoption of the official map and its protection against the encroachment of buildings are made subject to separate provision.

Mr. Bettman's provisions are like those of the alternative police power provision of the Standard Planning Act with reference to exceptions to this prohibition, namely, that an owner of property affected may appeal to the zoning or other board of appeals for relief through the granting of a permit to build, such permit to be granted in case it is shown that *the property in question of which such mapped-street location forms a part* will not yield a reasonable return to the owner unless such relief is granted, or that

> . . . balancing the interest of the municipality in preserving the integrity of the official map and the interest of the owner in the use and benefits of his property, the grant of such permit is required by considerations of justice and equity.[2]

Somewhat different in this respect is the model act proposed by Messrs. Bassett and Williams, which permits the board of appeals (or, if no such board has been appointed, then the local legislative body acting in that capacity) to allow the erection of a building within the

[1] *Op. cit.*, p. 41. [2] *Op. cit.*, p. 91.

lines of a proposed future street on the official map when it is shown that *the land within such mapped street or highway* is not yielding a fair return to the owner. As a condition of granting such permit, however, the board may impose any reasonable requirements designed to promote the health, convenience, or general welfare of the community. Permit shall be refused unless the applicant will be "substantially damaged" by having to place his building outside the mapped street or highway.

In the case of appeals for the granting of a permit to build in violation of the official map, the Standard Planning Act, in its alternative police power clause (in note 122), provides that the board of adjustment or appeals *shall* specify

> . . . the exact location, ground area, height, and other details as to the extent and character of the building for which the permit is granted.

Mr. Bettman's model act provides that the board *may* specify

> . . . the exact location, ground area, height, and other details and conditions of extent and character, and also the duration, of the building, structure, or part thereof to be permitted.[1]

All of the model acts provide for appeal to a board of adjustment or appeals, but the Bassett-Williams act is the only one which provides specifically that the legislative body may serve as such a board, in the absence of a board of zoning adjustment or appeals. The Standard Planning Act, in its alternative provision, and Mr. Bettman provide that appeal may be taken to the board of zoning adjustment or appeals or to a special board of adjustment or appeals created to satisfy the purpose of the said acts. No provision for a special board is contained in the Bassett-Williams proposal. Mr. Whitten, who, it will be remembered, recommends a combined zoning and planning enabling act, suggests that in the case of small communities

> . . . it *may* be desirable to have the planning commission act also as a board of appeals . . . [at] the discretion of the council. As between the council itself acting as a board of appeals and the planning commission so acting, the latter is much to be preferred.[2]

These several model acts are directed toward the same end. The differences are those of method and of degree of control. No suggestion is offered here as to which is the more to be recommended. One may be more applicable to a specific situation than another; and it is, of course, recognized by the authors of these acts that any one of them will require

[1] *Op. cit.*, p. 91. [2] *Op. cit.*, p. 127.

some adjustment to local conditions or to local legal and administrative customs and traditions.

ZONING ENABLING ACTS AND THEIR FRONT YARD AND BUILDING LINE PROVISIONS

Zoning enabling acts are much more uniform in their construction and conferring of authority than are the general planning enabling acts. All states except Washington, where zoning procedure is under general home rule power, have zoning enabling acts, a large proportion of which are modeled upon the United States Department of Commerce Standard State Zoning Enabling Act.[1] The constitutionality of the zoning principle is likewise so generally accepted throughout the country that there is comparatively little variation among states in the recognized legality of its use. There need, therefore, be no separation by states in a discussion of building line procedure under zoning. The extent to which zoning is used for the creation and protection of building lines appears to vary among states much more than do the sources of authority or the established legality of its use.

Zoning building lines, as established by practice, are of two general classes differentiated in purpose as follows:

(1) Building lines established primarily for the preservation of front yards, in order to maintain an even alignment of buildings, thereby preserving view and presumably improving the general appearance of the street, and to insure a reasonable space between fronting rows of buildings for light and air and for reduction of fire hazard.

(2) Building lines established incidentally for the preservation of front yards with the objectives listed above but primarily for purposes of ultimate street widening and reduction of traffic hazards and congestion.

This study is not directly concerned with the first class of building lines as established under zoning. Building lines of this type do occasionally preserve a clear way for later street widenings but usually only by chance. In some instances building lines intended to protect future street widenings are established under the guise of front yard lines, but for the purposes of this report such lines are regarded as falling within the second class.

This second type appears to be increasingly accepted as within the function of zoning and the police power, although as yet this practice is

[1] Prepared by the Advisory Committee on Zoning. Washington, Government Printing Office, 1926.

unsupported by any clear-cut decisions. Wherever zoning has been employed for this purpose, it has been with the usual enabling authority now operative in most states. And wherever done, it has been based upon the assumption that adequate width of streets and space between stores, apartments, and other buildings fronting upon opposite sides of main thoroughfares, capable of being assured only by a reasonable setback of buildings, are just as much in the interests of "public health, safety, morals, and general welfare" as is the preservation of front yards in residential districts. The immediate effect of building lines of this kind is merely to restrict the use of the land lying between the building line and the public street. There is no taking of land by the zoning. Such lines are administered variously in the several cities employing them, but as a rule, property owners affected have the right of recourse to the board of appeals or to whatever relief from undue hardship is provided under zoning.

As suggested above, all forty-eight states now have zoning enabling acts or equivalent legislation. Thus the establishment of building lines under zoning, with ultimate street widening as either the incidental or primary purpose, is open to all cities in every state. Variations in text or in interpretation of state constitutions may, however, have bearing upon the relative freedom of cities in different states to employ this procedure.

Experience of individual cities in employing this method of establishing building lines, together with available court decisions bearing upon this procedure, is contained in subsequent chapters.

POLICE POWER PROVISIONS OF HOME RULE CHARTERS AND HOME RULE POWERS GRANTED BY STATES

There are occasional instances of police power authority for the establishment of building lines, with or without specification of purpose, in the charters of a number of cities, for example, Fort Worth, Tex., and Berkeley, Cal. The charter of Dallas, Tex., provides for subdivision control.

Cities acting under home rule authority are, of course, in a better position to make progress with the establishment of building lines and the protection of street reservations than are cities not enjoying home rule authority and situated in states where no comprehensive enabling legislation exists for these purposes. The following list of states conferring home rule powers upon cities may be of interest in comparison with later

tables in this report indicating states where cities have made most progress in the establishment of building lines and protection of street reservations: Arizona, California, Colorado, Maryland (Baltimore only), Michigan, Minnesota, Missouri, Nebraska, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Washington, and Wisconsin.[1]

An Act Combining the Police Power and Eminent Domain

One observed example of the combining of the use of the police power and eminent domain in a single planning and street mapping act is the general planning enabling act of the state of California,[2] which applies both to cities and counties. This act follows somewhat the form of the Standard Planning Act in the making and protection of the master plan but requires that the master plan be adopted by the legislative body before becoming enforceable through the planning commission. The master plan, thereby, is given somewhat more force than is the case under the third type of police power enabling act described above.[3] As in those acts, platting control authority is conferred upon the planning commission with procedure and enforcement provisions defined in a separate act.[4] The master plan, adopted by the commission and by the legislative body after public hearings before each body, is enforceable with respect to all public projects shown on the plan and with respect to all dedications of streets or other lands, but it does not control private building operations in the interests of preserving street reservations, either through the establishment of building lines or mapped streets, except to the extent permissible through platting control. Protection of street reservations is left again to the administration of a second stage of plan corresponding to what is ordinarily termed the "official map" but here called the "precised street map." After adoption of the master plan by the legislative body, the planning commission is authorized to prepare precised street maps of one or all of its projected street improvements or new streets. Such precised maps may then be recommended to the legislative body for adoption. The legislative body may adopt such precised maps by ordinance after public hearings and thereupon shall certify copies thereof to the county recorder for record and to the building inspector.

[1] List compiled from the Appendix of *Law and Practice of Municipal Home Rule, 1916–1930*, by Joseph D. McGoldrick. New York, Columbia University Press, 1933.

[2] Laws 1927, c. 874, as amended by Laws 1929, c. 838.

[3] See pp. 16–18.

[4] Laws 1929, c. 837.

Up to the point of adoption of the precised map by the legislative body, procedure is quite similar to that of the police power acts, but at this point eminent domain comes into play. The amended act of 1929, which is still in operation, contains the following provisions:

(1) Any property owner affected by the precised map may make claim of "taking of property" within three months of the adoption of the precised map by filing notice with the clerk of the governing body.

(2) Upon failure of the governing body to purchase easement or to file condemnation proceedings within three months of filing of claim, the precised street map is declared vacated with respect to this property, and the claimant may demand and receive a certificate to that effect.

(3) Failure of the property owner to file such claim shall be considered a waiver of rights to damages but not of the right to compensation for land when taken.

(4) No owner may build upon property reserved upon the precised street map except after filing of affidavit of intention to build, giving details of cost, character, and location of building, not less than three months prior to the start of construction. The governing body then has three months in which to vacate the precised street map or to acquire easement or to start condemnation proceedings. Failure of the governing body to take action constitutes vacation of intention with respect to this property.

(5) The creation of a revolving fund for the purposes of the act is authorized.

The modified eminent domain procedure established by the first three provisions is designed to minimize damage claims and to reduce materially the total cost of easements indicated by the precised street map. It would appear, however, that such effect is largely nullified by the fourth provision, which virtually requires that there be money settlement, through purchase either of easement or of land and property, in all cases of contemplated construction within street reservations shown on the precised map. This definitely places a cash value upon all street reservation easements, regardless of circumstances and in opposition to the police power theory under which it is maintained, except in specific instances and under such conditions as abnormal shallowness of lot, that such easements either have no cash value to the owner or that their values to the owner and to the community are equalized by mutual benefits. The effect of the fourth provision in practice appears to be an almost universal reluctance of the cities and counties of California to proceed

under the precised street map provisions of the 1929 act, especially in connection with reservations for street widening purposes.

There is considerable inclination in California to proceed under the police power by an interpreted constitutional right to do so. This will be discussed later in various connections.[1]

Eminent Domain Acts

The Federal government and the states and all their political subdivisions, as well as many *ad hoc* bodies, have the unquestioned right of eminent domain in the acquisition and occupation of land for all street improvement purposes, whether for the widening, extension, or re-alignment of old streets or the building of new ones. This right has been so long accepted and so universally exercised that it requires no discussion so far as the scope and purposes of this study are concerned. We are concerned, however, with the nature and extent of its use in the acquisition of easements under a process of deferring the acquisition of full title in land, either by purchase or condemnation.

In addition to the Standard Planning Act and other general planning and street mapping acts designed to protect street reservations by the establishment of some sort of easement on the land, there are a number of special building line acts based on the use of eminent domain. Among the states having such laws are: Connecticut, Indiana, Louisiana, Massachusetts, Minnesota, Missouri, New Jersey, Oregon, Tennessee, Texas, and Virginia.

The original purpose of a large proportion of these acts, especially those of the New England states, was to preserve front yards by maintaining a uniform building line placed well back from the street. The procedure, however, is equally available for use in establishing building lines for street widening purposes and has had this effect where such lines have been established and held over a considerable period of years.

Procedure varies somewhat in the several states, but in general it is as follows. Lines are established by resolution or by ordinance, after public hearings, either upon petition by owners or through the initiative of the governing body. Damages and benefits are considered, and awards are made from which property owners may appeal. The effect of this procedure is to give the municipality title to an easement over the land.

Experience under laws of this type, to be summarized later for specific instances, appears to vary widely among different states and among

[1] See pp. 51–59, 88, 114.

TABLE II

STATES HAVING EMINENT DOMAIN LAWS FOR THE ESTABLISHMENT AND PROTECTION OF BUILDING LINES

State	Law	Application
Arkansas	* Acts 1929, Vol. I, Act 108	First and second class cities
California	Stats. 1917, c. 735	Municipalities
	* Stats. 1929, c. 838	Cities, cities and counties, or counties
Colorado	* Laws 1929, c. 67	Municipalities and regions
Connecticut	* Gen. Stats. (1930), §§ 404–409, as amended by Pub. Acts 1931, § 38a	Any town
	Hartford Charter (1931), §§ 158, 161	Hartford
	Numerous special laws applying to specific cities	
Delaware	Laws 1919, c. 96	Public roads
Georgia	Pub. Laws 1921, No. 165	Counties having population of 200,000 or more
Indiana	Gen. Laws 1911, c. 231, § 7	Depts. of public parks in first and second class cities
	Gen. Laws 1923, c. 168	First class cities
Louisiana	Acts 1926, No. 339	Cities over 50,000
Maryland	* Laws of 1929, c. 443	City of Frederick only
Massachusetts	* Gen. Laws (1932), c. 41, §§ 74–81; c. 82, § 37	Cities and towns
	Id., c. 45, § 11	Park Commissioners of Boston
Minnesota	Laws 1903, c. 194, as amended by Laws 1919, c. 504, and Laws 1923, c. 193	Any municipality operating under a home rule charter
	Charter of St. Paul, c. xiv, § 234	St. Paul
Missouri	Laws 1921, pp. 510–511	St. Louis
	Charter of St. Louis (1921), p. 510, art. vi, § 1	St. Louis
New Jersey	Laws 1917, c. 215, as amended by Laws 1920, c. 137, and Laws 1922, c. 238	Municipalities
North Dakota	* Laws 1929, c. 177	Villages and cities
Oregon	Laws 1919, c. 275	Municipalities
Tennessee	Private Acts 1923, Vol. II, c. 415	Cities over 160,000
Texas	Gen. Laws 1921, c. 87	Cities over 5000
	Gen. and Spec. Laws 1927, c. 276	Cities over 15,000
Virginia	Code (1919), § 3032	Cities and towns
District of Columbia	27 Stats. 532 (1893), as amended by 30 Stats. 519 (1898) and by later amendments	D. of C. outside of original cities of Georgetown and Washington

* General planning enabling act.

individual cities within the same state. In some instances the procedure seems to have been quite effective and economical. In other cities and states, costs have been discouragingly high. Sometimes this is due to what would appear to be consistent overvaluing of building line easements and sometimes to other local influences. There is no observed uniformity in methods of determining the value of easements. Too frequently, appraisers and condemnation juries overlook the fact that, in the case of lots of adequate depth, land taken or limitations put upon the use of land at the front of the lot have no more value than land taken or limitations put upon the use of land at the rear of the lot. In some states, notably Massachusetts, supplementary clauses tend to nullify the operation of the basic act. In Massachusetts also, such a clause places a limitation of one year upon the time during which claim of damages can be made. If there is even a remote possibility of actual or anticipated damage, the owner is thus driven to make his claim or forever forfeit his right. The result is an excess of damage claims tending to discourage or make impossible the establishment of building lines under this act. However, waivers of damages have often been secured in towns of this state prior to proceeding, thereby considerably decreasing the costs of ultimate widening.

Building Lines Established by Recorded Plat or by Land Contract

Either upon the initiative of the land developer or at the insistence of the planning commission as one of the conditions of plat approval, building lines are frequently shown on land subdivision plats and, in many instances, are made a matter of record and are thus as firmly established as street and lot lines. Such lines may be fixed in land contracts by description, and run with the deeds for a limited number of years, as provided by contractual agreement.

Usually such building lines are established solely for the preservation of front yards in residential districts. Only when required by planning commissions as a condition to plat approval do such lines become of interest in this study. When guiding land subdivision in accordance with a comprehensive plan, planning commissions may require building lines to be established in conformity with that plan. Master plan requirements are usually sufficiently definite to be translated directly into required dedication of ample street widths. In other cases it may be found that the plan can be adequately protected by the establishment of a building

line in lieu of dedication. A number of instances of this employment of the building line on plats have been found.

This type of building line is gradually giving way within city boundaries to building lines established and protected under zoning, but it is still effectively employed in outlying areas beyond the reach of present zoning authority. It must be said, however, that the usual "blanket" form of zoning setback line is not always an adequate substitute for plat building lines, which may more readily be fixed in accordance with the peculiar requirements of each street.

Miscellaneous Types of Building Lines

The chief deviations from the types of general building line laws classified and described above are found in those states, including Virginia and North Carolina, in which the practice has developed of passing special legislation applying to individual cities.

There are also a number of special methods for the establishment of building lines, most of them variations of the above general types. Perhaps the most unusual is that employed by the District of Columbia, which establishes no building lines as such but has for many years followed the practice of requiring very generous street widths incidental to land subdivision. The District then proceeds to occupy only a fixed proportion of the dedicated street width, retaining title to the remainder of the street, but leaving the land in the use of the lot owner for all usual purposes except for the erection of buildings and other such obstructions. The street line becomes, therefore, the building line. For example, if a 90-foot street dedication is required, the District occupies only 60 feet of this width, leaving a 15-foot yard or parking space on each side. Buildings may come up to, but may not encroach upon, this yard or space.

Throughout the above discussion almost exclusive reference is made to city or municipal procedure. Procedure in the few counties having special enabling legislation is so similar as not to require separate treatment in this general review.

All of the mapped street controls listed above are presumably to be based upon preëstablished comprehensive plans, but probably in no instance is there any enforced safeguard against spot or sporadic planning. Zoning also requires comprehensive treatment of a municipal area, but its "comprehensiveness" in practice may mean much or little when

applied to specific items such as building lines. It may not be out of place, therefore, in this general and introductory discussion to stress the importance of basing the establishment of both mapped streets and building lines upon comprehensive plans. No matter how firmly established any one of the alternative procedures may be, it is still subject to court review and must give evidence of being founded on sound reason. All methods involve, sooner or later, some considerable element of cost. Reason for, need for, and appropriateness of every mapped street and every building line should be measured against a background picture of the full probable future traffic requirements of the city which is afforded only by the comprehensive city plan.

CHAPTER III

LOCAL PROCEDURE AND EXPERIENCE

A DIFFICULTY in preparing this report has been to decide upon the way in which the material should be arranged or classified. Like enabling legislation, municipal experience also falls into certain general categories which may be arranged in various ways. The two principal groupings which have been used thus far are by eminent domain and by the police power. This seems justified inasmuch as most of the hesitancy of municipalities to proceed in establishing building lines or in protecting reservations for future streets seems to have arisen out of doubt as to whether the police power could be sustained or whether costs under eminent domain would be so great as to make action under that authority impractical. In reporting the experience of municipalities it has seemed best to continue these two general groupings and to classify experience and practice under them as follows:

Municipalities working under the police power

A. Establishing building lines for street widening purposes under zoning

B. Proceeding in conformity with planning enabling acts, general police-power laws, or constitutional police power

1. Establishing building lines for street widening purposes
2. Protecting future street reservations

Municipalities working under eminent domain authority

1. Establishing building lines for street widening purposes
2. Protecting future street reservations

In this chapter emphasis is laid upon actual methods in practice under the varying permissive laws, upon machinery of administration, and upon procedure. The question of results in actual financial gains to the communities concerned is here touched upon but briefly. To form a more comprehensive picture of what communities may reasonably expect to gain by the establishment of building lines and by protection of their reservations for future streets, it has seemed better to group all this collected information in Chapter VI under the title, "Economic Aspects."

Municipalities Proceeding under the Police Power

BUILDING LINES ESTABLISHED UNDER ZONING

Except by extensive personal investigation, it would be impossible to say how many communities in the United States are creating building lines for street widening under zoning. The use of the zoning ordinance for this purpose was not originally contemplated by early proponents of zoning, but, with the growing tendency of the courts to take a more liberal view of the extent of the police power of municipalities, it seems at least possible that zoning ordinances incorporating building line provisions — even for street widening purposes — may be sustained, provided they are intelligently drawn and manifestly intended to promote the general welfare. This is, of course, still a matter of speculation, but it is not a matter of speculation that zoning ordinances are now being used for protection of future street widenings and that their provisions are, as one reply to a questionnaire put it, "being made to stick." It would be purely academic to say that this cannot be done. It is being done.

Of the 90 municipalities whose experience has been studied in detail for this report, 26 are using their zoning ordinances to protect future street widenings; an additional seven or eight, not studied in detail, are reported by the Chicago Regional Planning Association as using zoning for this purpose. In addition, the zoning ordinances of San Mateo, Kern, and Santa Clara counties, Cal., are drawn to protect street lines in accordance with the master plans of those counties.

A few of the communities working under zoning have proceeded to fix the building lines required by their zoning ordinances in accordance with a comprehensive major street plan; a few have worked out comprehensive building line maps covering the entire community and amounting to practically the same thing as a major street plan; and still others, in the absence of proper street plans or planning studies, have made more or less well-considered guesses as to what the future width of their major streets should be and have drawn their building lines accordingly. It is outside the purpose of this research to go into the question of whether or not particular building lines have been established properly and with due regard to the best development of a community. The most this study can hope to do is to make clear the various methods of procedure which have proved successful and to indicate observed and reported weaknesses and difficulties.

Experience under zoning procedure is discussed in the following pages. The communities studied are grouped alphabetically under their respective states, with the exception of Akron, Ohio, and Kenosha, Wis. Both of these cities have had long and successful experience under zoning and have worked out a considerable body of technique, so that it seems desirable to give their experience in some detail at the beginning of the section.

Akron, Ohio. Akron has had experience in the establishment of building lines under its zoning ordinance since 1922. The Ohio zoning enabling act[1] carries a special clause prohibiting the establishment of building lines for street widening purposes, a clause which lends particular interest to Akron's experience, for Akron has not only established building lines under this act but has been upheld by the courts in such establishment.[2] Before any building lines were adopted, a special study was made as to the legality of police power establishment of building lines in business and industrial districts. The city planning commission was finally convinced of the entire appropriateness and desirability of so doing and authorized the planning engineer to prepare a comprehensive setback plan covering the entire city. This plan was made in the form of a building line map originally consisting of twelve sheets drawn at a scale of 400 feet to one inch, the same scale as used for the zoning map. This map was adopted by council as a part of the zoning ordinance in 1922. A typical section is reproduced on the following page. "There can be no uncertainty," according to Mr. Charles F. Fisher, former Planning Engineer of Akron, "as to whether buildings are required to set back, nor as to the setback distance on any street frontage, nor can there be any question as to the comprehensiveness of the building line plan." [3]

In the preparation of the plan, certain basic principles governed the establishment of the building lines:

(1) Building lines were required on all streets in residence districts.

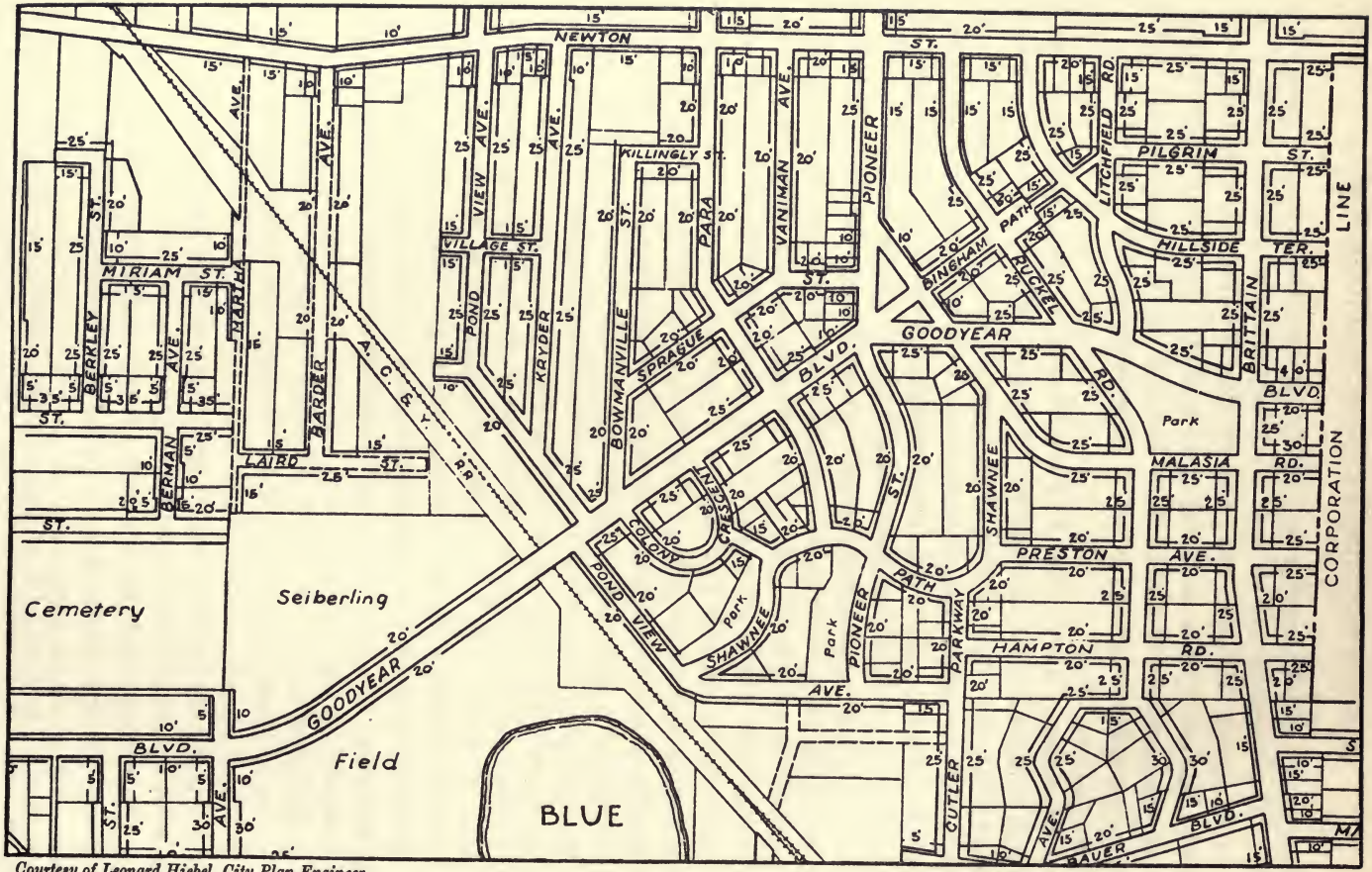
(2) No setbacks were required on streets in the existing central business district nor on a number of other streets where it was deemed inexpedient to require buildings to set back, but setbacks were established in outlying business and industrial areas.

(3) In business and industrial districts, building lines were the same on each side of the street, and "where it was found to be inexpedient to

[1] Laws 1919, p. 1175 (H. B. 697).

[2] In the case of Kaufman *v.* City of Akron, Court of Common Pleas, Summit County, Ohio, Jan. 6, 1927. See p. 126 for summary of decision.

[3] Charles F. Fisher, "Akron's Building Line Plan," in *City Planning*, Jan., 1934, p. 13.



Courtesy of Leonard Hiebel, City Plan Engineer

FIGURE 1. A TYPICAL SECTION OF THE AKRON, OHIO, BUILDING LINE MAP

place a building line on one side of a street in a business district, none was established on either side." [1]

(4) In residence districts, building line setback distances generally ranged from 25 to 60 feet, or more where justified by conditions, with 10 to 25 feet along the sides of corner lots.

(5) In business and industrial districts, building lines on streets already largely built up to the street line were placed 10 to 12 feet back, and on undeveloped streets or where buildings were already set back, the new building lines were drawn from 15 to 25 feet back.

(6) In order to provide for hardships that may be caused by the establishment of building lines, the board of appeals is authorized to allow "certain variations of the building line regulations and to make exceptions in particular cases where unusual or exceptional conditions exist; for example, where a lot is much less than normal in depth, or where a corner lot is much less than normal in width, or where a building would be pocketed between two projecting buildings." [1] Such variation is to be authorized after public notice and hearing.

A man who wants to erect a store directly on a street on which the building line map shows a 12-foot setback will follow about this procedure:

(1) He will apply to the building inspector for a permit to build, furnishing a description of the building to be erected and a plat showing its proposed location on the lot.

(2) The building inspector will refuse the permit upon finding that the proposed building is to be constructed in front of the building line shown on that street.

(3) The owner may then revise the building location on his plat, or, if he feels that he has good reason for wishing to build to the street line, he will take his complaint to the board of appeals and request a variance to be made in his case.

(4) The board of appeals may accept or reject the petition for variance. If the board rejects it the owner has recourse to the courts. If the board grants a variance, it may, and usually does, attach certain conditions thereto. If the conditions are accepted by the owner, a permit for his building will then be issued by the building inspector.

In ten years 229 appeals for variances or exceptions have been filed. About 200 have been granted. With respect to these, Mr. Fisher says:

> Many of the appeals granted merely permitted minor projections in residence districts or small, temporary structures in other districts.

[1] *Op. cit.*, p. 14.

> In authorizing an extension beyond the building line on a thoroughfare in a business district, the board has invariably limited the portion built beyond the building line to one story in height and has required, as a condition, that an agreement be executed and filed binding the owner to remove such portion beyond the building line at his own expense if and when the conditions on account of which the exception was made cease to exist.[1]

A typical agreement to waive damages is given in the Appendix on pages 228–229.

With only 229 appeals for variance in ten years, the effectiveness of the building line procedure in Akron can hardly be doubted. The procedure has come to be accepted by the community as a wise public policy and as indeed promoting the general welfare. Economically, the building lines so established have saved the city a great deal of money, although it is true that they were established only incidentally for that purpose. A more detailed discussion of the savings incident to the establishment of building lines will be found on page 141. Total savings are reported to have amounted to more than $4,000,000 up to July, 1933.

Kenosha, Wis. A comprehensive city plan was prepared for Kenosha under the authority of the state enabling act,[2] which provides for the adoption of a comprehensive city plan and the carrying out of such a plan by street widening, establishment of setback or building lines, excess condemnation, benefit assessments, etc., and in addition, authorizes zoning.[3]

After comprehensive surveys and studies of Kenosha's existing facilities and future needs, a plan was made. The public was informed of its purposes and hearings were held, after which the plan was adopted by city council. This plan showed a major street system for the city and included a zoning ordinance. The major street system as established by the city plan laid down the ultimate new widths needed as well as defining future street locations. To quote Mr. William E. O'Brien, formerly City Manager of Kenosha:

> If after the adoption of the major street plan new structures were allowed to be erected at the old street line it would eliminate the possibility of ever increasing the width of the street, due to the pro-

[1] *Op. cit.*, p. 15.

[2] Wis. Stat. (1927) § 62.23.

[3] The validity of the zoning ordinance under this act was sustained by the Supreme Court in State *ex. rel.* Carter *v.* Harper, 182 Wis. 148, 196 N. W. 451, 33 A. L. R. 209 (1923).

hibitive cost of widening. This would defeat or nullify the purpose of the major street plan.[1]

To prevent this unhappy result the city carried on an intensive educational campaign with particular regard to the major street system and the zoning ordinance. As an immediate effect, many property owners willingly set back new structures to provide the additional street widths laid down in the plan. Other property owners, however, for various reasons refused to set back, and in these cases the city felt obliged to buy, lease, and bargain, in order to maintain the setback lines. This condition was not, of course, satisfactory, and search was undertaken for a more uniform procedure which would give some assurance of being a continuing process. In studying the problem the city attorney became convinced of the legality of the use of the zoning ordinance for establishment of building lines and suggested a procedure subsequently adopted by city council.

To summarize further from the above paper, the proposal as adopted may be outlined briefly as follows:

(1) Complete and thorough study of the needs and requirements of the major streets

(2) Inclusion in the zoning ordinance of three major items
   a. Definition of a major street
   b. Description of the proposed new center line of each major street
   c. Statement of the setback from the center line required to obtain the proper width for each major street

Furthermore, under subdivision control regulations, building lines are required to be shown on plats for record within three miles beyond the city limits in order to secure the same results as though the zoning ordinance were in effect.

The building inspector is responsible for preventing any infringements of the setback lines. The general procedure is the same as that of Akron, except that in Kenosha, after issuance of a permit by the building inspector, the city engineer definitely establishes the street and building line on the ground for each individual builder. The building is checked by the building inspector during process of construction for conformity to the line so established. Appeal from the decisions of the building inspector is to the board of appeals.

[1] In "The City Plan of Kenosha, Wisconsin," a paper presented to the 59th Convention of the American Society of Civil Engineers, July, 1929.

Procedure in difficult or unusual cases is outlined by Mr. Floyd Carlson, City Plan Engineer of Kenosha, as follows:[1]

1. For odd-shaped parcels of land which front [*i.e.*, abut] on major streets and where the side of the lot faces the major street.

a. Kenosha's method of dealing with cases of this type is dependent on each individual set of circumstances. The ordinance, of course, is definite in not permitting building beyond the setback line. However, in the event that the setback is so great that the man is not permitted reasonable use of his lot it is obvious that some consideration be given.

If the owner has no immediate intention of building nothing is done. When an owner comes in good faith with plans to build a building and the city is assured of his good faith, the city will either purchase the entire lot or that portion of the lot which extends beyond the setback line, preferably the latter. The funds for such a purchase are taken from a budget set up the first of the year for purchases for street widening. However, we have had several experiences where the owner had no intention of building and was merely using the setback ordinance as a means of attempting to dispose of his property to the city. In such cases the city has steadfastly refused to bargain with the owner.

In the event that a property owner, under such conditions, refuses to be reasonable in the price of his property to be sold to the City, the City makes a careful record of all the negotiations and all the offers made and then refuses to buy except at what they determine is a reasonable figure. This is done so that in the event the owner will not accept the City's price but elects to go to the courts we will have evidence to show that we were dealing fairly and were willing to pay a fair price, so that the question of the legality of the zoning ordinance is not contested but the question of a just compensation *only* will be attacked. We feel that, in the event any property owner goes to court on a case where the setback is for street widening purposes, the City wants to prove to the court that this is a reasonable case and not an exception to the rule. This procedure has worked so successfully at the present time that we have as yet to be taken to court by any citizen who felt that the setback ordinance for street widening purposes was unreasonable.

2. The case where an existing building encroaches on the setback line and where the owner wishes to add to the building.

a. Kenosha has had several cases of this kind, and in every case they have been settled to the entire satisfaction of the City of

[1] In a letter to Mr. L. F. Brinkman, Investigator for the Board of City Planning Commissioners of Los Angeles, dated Mar. 8, 1933.

Kenosha and the property owner in the following manner: the property owner prepares and presents plans for the addition to the Building Inspector. The Building Inspector informs the owner that no addition can be made beyond the setback line and that the City is willing to pay all costs of moving the present building back of the setback line or cutting off the front of the building to the setback line, whichever is desirable to the owner. Then the City prepares a statement showing the exact costs of this operation. It is the policy of the City of Kenosha to figure the total cost of setting back an existing building or cutting off part of a building and then add 15 per cent for inconvenience to the owner. This offer is then made to the owner, who either accepts or rejects it. We have had several cases like this where a satisfactory arrangement was made and the building set back or cut off.

We have had one case where the owner refused to accept the offer made by the City of Kenosha, and he built the new building, setting it back on the new setback line while the old portion remained 17 feet ahead of the setback line. This particular owner hired an attorney and is dealing with the City of Kenosha, but even though not satisfied with the price offered by the City he did not go into court and attempt to set aside the setback ordinance.

3. Alterations to structures setting ahead of the setback line.

a. This situation is very difficult to handle fairly. It is a theory of the setback ordinance that no additional value be placed ahead of the setback line which would increase the cost of the ultimate widening of the street. When the alteration is a small one and not extending beyond the walls of the building, we have permitted such alteration through the Board of Zoning Appeals. If the alteration consists of adding more stories or completely modernizing the building we have steadfastly refused to issue permits.

The experience of Kenosha is regarded as being entirely satisfactory and successful. No attempts have been made in any manner to have any portion of the building line ordinance set aside in the courts, a fact that is undoubtedly due in considerable part to an unusual degree of citizen understanding and coöperation. In this regard the letter quoted in part above makes the following statement:

. . . The ordinance has been in effect some five years at this time, and the plan is so universally known and so well sold to the public that it is doubtful that the public would permit any new administration to nullify or set aside the ordinance. We feel that a large share of the success of the enforcement of this ordinance is due to the willingness and reason-

ableness of the City in dealing with unusual cases where the ordinance unquestionably works a hardship on the property owner and prevents a reasonable use of his property.

Between 1925 and 1930, 83 buildings with a total frontage of 4390 feet, representing a total valuation of $2,360,570, were set back.

A revolving fund is provided in the city budget to take care of the city's share of the cost of setting buildings back to the new line. This fund and the policy of purchase of properties clearly damaged by observance of the setback provisions are undoubtedly large factors in the successful administration of the setback provisions of the Kenosha zoning ordinance.

The administrative procedures of Akron and Kenosha have been given in considerable detail because they have been in operation longer than those of most cities and are outstandingly successful. It is worth remarking that extension of the use of the police power to establishment of building lines for street widening purposes was carefully studied by both cities before the work was undertaken, the zoning ordinances of both cities were fortified by comprehensive city plans, and the building line ordinance in each case was accompanied by a building line map based on the requirements of the major street system as outlined in the city plan.

Space does not permit detailed statements of the procedures and experience of the many cities found to be using zoning in one way or another for the establishment and protection of street reservation lines. Only those offering some unusual characteristics have been included in the following discussion.

CONNECTICUT

Milford. This city requires setbacks in industrial and business zones as well as in residence zones. Uniform setback lines in industrial zones are established at 40 feet from the center line of the street. Building lines are required to be shown on plats.

The town reports no cases of property damage because of enforced observance of the building lines, nor any cases where extensive alterations or additions have been made in front of building lines, except that in several cases where proposed buildings were to be placed on a building line established by the zoning regulations some distance behind the old

building line, the board of appeals allowed the new building to be placed in line with an old building on the old building line.

ILLINOIS

The Chicago Regional Planning Association reports that at least eight cities in or near the Chicago region are establishing building lines for future street widenings through their zoning ordinances. Seven of these cities are in Illinois, namely, Westmont, Homewood, Park Ridge, Oak Lawn, St. Charles, Alton, and Aurora. The method employed differs from that of Akron or Kenosha in that a special building line clause is inserted in the zoning ordinance. A typical clause of this kind follows:

> On certain streets named in this section, supplemental setback lines shall be and hereby are established which are to be measured from the center line of the street in each case respectively, and which shall take precedent [*sic*] over and be binding regardless of any of the other building line setback provisions of this ordinance.
>
> Along the streets herein designated no building shall be erected or altered so as to place its front or side line nearer to the present center line of the street than the setback given for such street, nor shall that part of the existing building projecting beyond the setback line herein designated be altered or remodeled except when such alteration or remodeling is not structural in character and does not increase the bulk of that part of the building so projecting.
>
> Supplemental setback lines to be measured from the center line of the street are as follows:
>
> Naperville Road shall have a setback line of 50 feet
> 55th Street shall have a setback line of 50 feet
> Cass Avenue shall have a setback line of 50 feet [1]

Determination of these setbacks is in accordance with the major street plan of the municipalities concerned, and good success is reported with the procedure.

The Illinois legislature has recently passed a police power law authorizing and empowering cities, villages, and incorporated towns "to establish building or setback lines on or along public streets, traffic ways, drives or parkways," [2] and a corresponding law empowering county boards "to establish building or setback lines on or along any road, street, traffic-way, drive or parkway outside the corporate limits of cities, villages and incorporated towns." [3] No body of experience has as yet,

[1] Westmont, Ill., Zoning Ordinance, 1932, sec. 8.
[2] Laws 1933, p. 218 (H. B. 938).
[3] Laws 1933, p. 421 (H. B. 939).

of course, accumulated under these laws, although a great many Illinois municipalities have been establishing building lines for some time either under zoning or some other procedure.

INDIANA

Hammond. The procedure here is much the same as in Westmont, Ill.

Indianapolis. Building lines are set in both business and residential districts. The principal requirements for front yards in business districts are: where 50 per cent of the frontage on one side of a street is improved with buildings at the property line, the remainder of the block may also be built to the property line; in any other case a building line is required equal to 10 per cent of the depth of the lot up to a maximum of 15 feet.

The zoning ordinance provides certain specific variations which the board of appeals may make in special cases. These are:

> Sec. 20. Front Yards Exceptions. Whenever any parcel of land now separately owned and which was so owned prior to the passage of this ordinance is of such restricted area that it cannot be appropriately improved without building beyond the front yard line established by the above sections the Board of Zoning Appeals may on application in a specific case authorize the construction of a building beyond said front yard line to an extent necessary to secure an appropriate improvement of such parcel of land. On a lot adjoining a street frontage along which either no front yard line or a front yard line nearer to the street is provided, the Board of Zoning Appeals may, on application in a specific case, permit a building or a portion thereof to be erected beyond the front yard line herein provided. Whenever the distance of the front yard line back from the street line as established by the alignment of the existing buildings as provided in subdivision (1) of Section 18 [requirements for residential districts] is more than 40 feet or more than 20 per cent of the average or normal depth of the lots having their front lines along such street frontage, the Board of Zoning Appeals may, on application, after public notice and hearing, permit the erection of buildings nearer to the street line but not nearer than would be allowed under the rule provided in subdivision (2) of Section 18.

KANSAS

Wichita. A "special area" zone is set up in the zoning ordinance along certain streets on which all buildings are required to set back a uniform distance from the center of the street. This district is indicated

on the area map as a narrow strip paralleling the street. Streets totaling approximately ten miles in length are shown in this special area district.[1]

The city reports good success with this method. One favorable court decision was rendered,[2] and this decision was not appealed.

KENTUCKY

Covington. This city is following much the same procedure as Lexington, described just below.

Lexington. This city works partly with a zoning ordinance and partly by endeavoring to secure coöperation of property owners in following out proposals of a major street plan. In the Business "A" District, building lines are established at a distance of 20 feet from the street line. This is only incidentally to take care of possible street widenings. In other business and industrial districts the city is proceeding, unofficially, with the effort to keep new buildings back to the proposed line of the major streets. Very fair success is reported with this method. Building lines are required to be shown on new plats giving a minimum setback of 15 feet and a maximum of about 60 feet, in accordance with the major street plan for the city. Building lines have been established on about 40 miles of streets through this control of new subdivision plats, and the planning commission reports virtually complete compliance with the established building lines.[3]

MARYLAND

Gaithersburg. An ordinance adopted in March, 1933, provides for the establishment of building lines 15 feet back of the street line on all property zoned as commercial or industrial, and 25 feet back of the street line on all property zoned for residence. These building lines are shown on the zoning map and have met with the approval of frontage owners at the zoning hearings.

The ordinance was adopted in conjunction with general planning studies. The 15-foot setback for all business frontage was considered entirely practicable as most of the store frontage consisted of frame structures which would gradually be replaced by more permanent buildings.

Maryland-National Capital Park and Planning Commission. Under zoning, building lines providing setbacks of 25 feet in residential areas

[1] Copy of the ordinance provisions establishing this area district may be found in Appendix, pp. 227–228.

[2] Weigand *v.* City of Wichita, 118 Kan. 265, 234 Pac. 978 (1925).

[3] See also p. 61.

are required to be shown on new subdivision plats, and this zoning setback is an addition to any dedication that may be required under platting for future anticipated width requirements. This has been in operation since 1928. The Commission's procedure is outlined by Mr. Irving C. Root, its Chief Engineer, as follows:

> In granting industrial and commercial zoning amendments in the Maryland-Washington Metropolitan District the zoned area is set back a sufficient distance from the center of the street to provide for future widening. . . . This practice has been followed for several years without objection being raised. Commercial structures are thus built on lines providing 100 feet across the street between fronts on main highways. Some highways are reserved 120 feet wide by this method although 100-foot [highways] predominate.[1]

With regard to this zoning amendment regulation, Mr. Root says:

> . . . The ordinance states that in commercial and industrial zones *all of the lot may be covered.* Naturally, if such rezoning fronts on a master plan highway of inadequate width we set back the front of the zoned area 50 to 75 feet from the street center. This actually leaves a strip of residential property between the newly zoned commercial or industrial [district] and the street right-of-way line . . . we have been doing this for so long that it has become accepted practice.[2]

MASSACHUSETTS

If there is any state where eminent domain procedure has been considered universal in the establishment of building lines it is Massachusetts. It is, therefore, particularly interesting to find several Massachusetts communities proceeding under the zoning power to establish building lines. These building lines, like most of those established under zoning ordinances, are only incidentally for street widening purposes. A letter from Mr. Edward T. Hartman, State Consultant on Planning, under date of June 21, 1933, makes the following statement:

> This covers the question of legal authority and indicates that we are doing some building line work under the police power and not definitely associated with zoning, a great deal under the police power in connection with zoning, and that we do some of it under eminent domain.
>
> The purpose for which these lines have been established . . . is to make possible a widening somewhat definitely foreseen, or a widening if and when it is needed. They are also established for the purpose of

[1] In answer to questionnaire dated May 6, 1933.
[2] In a letter to the author dated Sept. 15, 1933.

protecting the amenities of the town. Questions of safety and of some protection from noise, dust, fumes, etc., all have a bearing.

Other authorities in this state, however, differ from Mr. Hartman in their opinions as to the extent to which such building lines as are discussed above have been created with widening purposes in view.

Natick. Setback is required throughout the entire business district.

Newton. This city originally established building lines under eminent domain. Since the adoption of its zoning ordinance with front yard provisions for residential districts, however, almost no building lines have been established under eminent domain authority.

A uniform 25-foot setback is required in single and private residence districts and 15 feet in general residence districts, but new buildings are not required to observe the line in blocks where existing buildings are built nearer the street.

Building lines in accordance with the zoning law are required to be shown on new plat maps.

Walpole. This town requires front yard setback for all neighborhood store centers.

Wellesley. Under zoning regulations, setback is required throughout the business district.

MICHIGAN

Dearborn. Building lines have been established in the business district at a uniform distance of 40 feet from the center line of the street.

The 1931 zoning ordinance in its section on front yards makes specific provision for hardship or damage inflicted on property owners, as follows:

> Sec. 603.2. INFLUENCE OF EXISTING BUILDINGS ON DEPTH. Where a front yard of less depth than above provided exists in front of one or more buildings in a block on one side of the street, a corresponding reduction in the above depth requirement may be permitted by the Board of Appeals on any lot whose use with full front yard provision would, in the opinion of such Board, be adversely affected by such existing condition; but such reduction shall apply only to the ground story and shall be granted in the form of a temporary permit, which shall not be renewable after the conditions responsible for the issuance thereof shall have ceased to exist.
>
> Sec. 603.3. EXCEPTIONS FOR SHALLOW LOTS. The above provisions of Section 603.1 shall not apply so as to reduce the buildable depth of any lot of record at time of passage of ordinance to less than forty feet.

Side yards on street side of corner lots to be measured to established center line of side street and to be no less than forty feet in width except that this provision shall not apply to reduce the buildable width of any existing lot to less than 80 per cent of the lot width nor to less than 20 feet in any case.

Kalamazoo. This city has a special building line clause in its zoning ordinance similar to that used in certain Illinois municipalities.[1]

Saginaw. Building lines in business districts are placed 10 feet back of the street line. Building lines are not required to be shown on plats except when they would be necessary to protect the full width of street as shown on the major thoroughfare plan of the city.

MISSOURI

University City. As yet, this city has no major street plan, so that the setback provisions in the zoning ordinance are very indirectly connected with the proposed street widening projects.

The provisions of the amended zoning ordinance relating to setbacks are summarized in the following paragraphs.

Setback in "A" Residence District (one-family dwellings) shall be not less than 30 feet from the street line, except that when 25 per cent or more of the frontage on one side of a street in a block is built up to a minimum setback line of more or less than this 30 feet, no new building may project beyond the minimum setback line so established, except that no building needs to set back more than 40 feet. This regulation shall not be interpreted to reduce the buildable width of a corner lot existing at the time of passage of the ordinance to less than 28 feet.

Setback for "B" Residence District (one- to four-family dwellings) to be 25 feet from the street line, with exceptions corresponding to those in "A" District, except that the buildable width of a corner lot shall not be reduced to less than 25 feet.

Setback for "C" Residence District (one- to six-family dwellings) is the same as for "B" District except that the buildable width of a corner lot shall not be reduced to less than 30 feet.

In "D" Residence District (apartment houses, tenement houses, and hotels), there must be a 40-foot setback from the center line of the street, with similar exceptions to the foregoing where 25 per cent of frontage on

[1] See p. 41.

one side of a street within a block has been built up with buildings having a greater or lesser setback.

In "E" Commercial District (shops employing not more than five persons at any time on the premises) there is a 25-foot setback, or, where part of the frontage on one side of a street, between two intersecting streets is in an "A" Residence District, the minimum setback shall be 30 feet. The buildable width of a corner lot shall not be reduced to less than 25 feet.

NEW YORK

Buffalo. The zoning ordinance is reported to have been drawn in such a way as to give protection to ultimate street widenings.

Islip. The zoning ordinance includes setback provisions for business districts, but if consideration was given to the possible use of such setbacks for later street widening purposes there is no statement to that effect in the zoning ordinance. The courts recently sustained the legality of the setback in the business districts.[1]

OHIO

Akron. For a discussion of the experience and procedure of Akron, see pages 33–36.

Cleveland. From 1922 to 1929, Cleveland had a building line ordinance under the police power under which procedure was very similar to that set up by the zoning ordinance adopted in the latter year. The city was divided into two building line districts. In the residence district the building line was set back a distance equal to 15 per cent of the depth of the lot. In the non-residence district no building lines were established except on specified main thoroughfares, where setbacks ranged from 5 to 25 feet.

Building lines for the various purposes permissible under the police power were established under this ordinance, the validity of which was sustained in the case of *Weiss v. Guion.*[2]

Under the zoning ordinance adopted in 1929, all the building lines established under the 1922 ordinance were retained, and some additions were made. Procedure is quite similar to that in Akron. The building

[1] In the case of Town of Islip *v.* Summers Coal & Lumber Co., Inc., 257 N. Y. 167, 177 N. E. 409 (1931).

[2] For a summary of this case, see p. 125.

line map is adopted as part of the zoning ordinance, and appeal is through the board of appeals.

Where a specified percentage of the block frontage is already built up, it has been customary to allow one-story extensions to the street line, either with or without a time limit on the validity of the permit. If there is a time limit, this is often set at four years.

Building lines are required to be shown on new plats, and the following statement must be signed by the owners of the property:

> We, the undersigned, owners of all land abutting on the streets herein shown, in consideration of the approval of this plat, herein proposed for dedication, hereby agree for ourselves, our heirs, successors and assigns, that no building including a porch shall be built or maintained or suffered to exist on any such lands nearer said streets than the building lines shown herein in red.
>
> This agreement is to be considered a covenant running with the land for the benefit of and enforceable by the City of Cleveland or any owner of land affected by this restriction.

The building lines are being very generally observed. By the time Euclid Avenue came to be widened, for a distance of a little over 6000 feet, new buildings had been placed so completely in conformity with the setback provisions of the zoning ordinance that there were no damages for the city to pay for buildings.

Middletown. Building lines are required on both preliminary and final plats where plats are located in unzoned territory.

Piqua. This city has a special building line clause similar to that used in the ordinances of Westmont, Ill., and Hammond, Ind. (See page 41.)

OKLAHOMA

Oklahoma City. Twelve-and-a-half-foot setbacks are required in outlying business districts.

Ponca City. The zoning ordinance contains a special building line clause, similar to those of Kalamazoo, Mich., and the Illinois municipalities discussed on page 41.

OREGON

Medford. This city also has a special building line clause in its zoning ordinance similar to those of Kalamazoo, Mich., and the Illinois municipalities discussed on page 41.

RHODE ISLAND

Westerly. A special state enabling act [1] applying to Westerly gives unusual powers for combined zoning and subdivision control, including the regulation of "the alignment of buildings along street and water frontages." Under this provision front yard lines up to 50 feet in depth were provided on highways where a future widening might prove to be desirable.

UTAH

Salt Lake City. No future widening of streets is contemplated except in a district now zoned as residential, and this classification carries a minimum 15-foot building line requirement. Where a commercial district adjoins a residential district, the provisions of the residential district govern. These setbacks are expected to take care of any future street widening that may be necessary. Setbacks of 15 feet on one side and 10 feet on the other are required in the case of corner lots.

WISCONSIN

Kenosha. For a discussion of the experience and procedure of Kenosha, see pages 36–40.

GENERAL SUMMARY OF PROCEDURE AND EXPERIENCE UNDER ZONING

Thirty-odd cities are noted above as using zoning ordinances and procedure for the establishment of building lines more or less directly intended for the purpose of protecting future street widenings. Doubtless there are many other places employing similar practice which have not come to the writer's attention. It is true that all building lines, established for whatever purpose and by whatever means, operate to simplify and to lessen the cost of later street widenings. This is as true of front yard lines, established almost universally in zoning ordinances, as of lines established under any other procedure. However, this incidental effect of zoning front yard lines, while recognized, is not of primary concern to this study. Only instances of apparently or avowedly direct use of zoning authority for the establishment of building lines for the protection of ultimate street widenings are reported above.

In all instances, this departure from earlier conceptions of the extent of zoning authority has been made with the contention that assurance of

[1] R. I. Acts & Resolves 1922, c. 2299, amended by Pub. Laws 1923, c. 538; Acts & Resolves 1925, c. 746; Pub. Laws 1930, c. 1686.

adequate street widths for the free circulation of vehicles and of air bears as much relation to "the public health, safety, and general welfare" as do many other generally accepted functions of zoning. In most instances it will be noted that cities using zoning authority for this extended purpose fully recognize the dividing line, cutting across their procedures, between the police power and eminent domain. They have provided for the relief of exceptional cases, wherein it is clearly evident that damage to the individual exceeds the gain to the general welfare, through the allowing of variance or granting of compensation. Perhaps the best example of such recognition is that of Kenosha, Wis., described above. In spite of the extent of apparently successful employment of zoning for the protection of street widening lines, it seems probable that this procedure cannot be followed with entire safety and success except with readiness and with means to handle cases of proven damage when and as they occur.

It is likewise significant that the most outstanding success has been achieved by those cities that have used comprehensive thoroughfare plans as bases for building lines, with widths determined in accordance with preëstablished functional requirements of individual streets. The placing of building lines at a uniform distance from center lines of streets throughout an entire district achieves the purpose of maintaining a minimum distance between buildings which, presumably, may be fixed at that point calculated to afford good circulation of air in the interests of public health. But widths so unrelated to varying functional requirements of streets fail to recognize those equally important purposes of zoning, "the promotion of safety and (some elements of) general welfare." Except by variation of setback depths in accordance with actual requirements as determined by plan, some setback establishments are likely to be found on the thin ice of doubtful justification, and others are likely to be inadequate to specific needs. As supporting evidence, the use of a comprehensive plan to establish setback depths in accordance with demonstrable need should be of weight in possible cases of contest in court.

In many instances it appears that zoning has been used for the protection of street widening lines for a complexity of reasons, including its simplicity of procedure, the fact that it uses administrative machinery already set up and in operation, and that legislative authority to proceed otherwise (such as that provided under official map acts) is so often lacking. Further incentives to its use are the complexity and comparative

unworkability of other existing methods, and widespread discouragement with eminent domain procedures because of their prohibitive, and frequently unjustified, costs. It has been a common experience of cities to find themselves faced with the alternatives of protecting the community's interest in an adequate street system through zoning and the police power or of making no effort whatever to safeguard future street widths, with the inevitable result that needed widenings become less and less likely ever to be accomplished because of prohibitive and cumulative costs.

BUILDING LINES FOR STREET WIDENING ESTABLISHED UNDER CITY PLANNING ENABLING ACTS OR GENERAL LAWS

So far as legal authority is concerned, the municipalities treated in this section might very well fall into two general classes:

(1) Municipalities proceeding under planning enabling acts with definitely prescribed authority.

(2) Municipalities acting under general police power laws, and including: those acting under "the general police power of a city," which has been considered sufficient grounds in some communities and in some states to provide for the establishment of building lines; those acting under police power provisions in their charters; and those acting under specific state enabling laws, which nevertheless do not require the establishment of building lines in accordance with comprehensive plans.

Since this chapter deals primarily with experience and methods, and since in several instances cities not legally required to combine their building line establishment with master plan or official map procedure nevertheless do so, the two groups become so mixed in practice that it seems proper to group them all together here.

CALIFORNIA

Berkeley. Experience goes back to 1922, when city ordinance No. 791–N. S. was passed.[1] Authority for this ordinance rests in a provision of the city charter giving council power to order the opening, extension, widening, straightening, or closing of any street of the city and power to condemn and acquire any and all property necessary and convenient for that purpose.

[1] Text of this ordinance is given on pp. 216–217 of the Appendix.

TABLE III

INSTANCES OF BUILDING LINE ESTABLISHMENT IN BERKELEY, CAL.

Street	Date of Establishment	Depth of Building Line in Feet	Extent of Building Line in Feet	Approximate Lot Depths in Feet	Buildings Observing Building Line
Shattuck Avenue Both sides from Adeline St. south to the city line . . .	Nov., 1928	7	3000	100	2
Shattuck Avenue West side only, between Eunice and Amador Sts.* . .	Jan., 1929	16.59	250		3
Area of 0.51 sq. mi. bounded by Oxford, Eunice, Hearst Sts., and the city line .	Jan., 1924	5		125	200
Benvenue Avenue Both sides from Ashby Ave. north to Stuart St.	Oct., 1927	25	1050	148	
Solano Avenue On the south side from the city line to the Alameda	July, 1926	8.5	1500	95	2

* Building line established before property was subdivided.

Procedure is by special enactment for each street, either at the initiative of council or by petition of owners asking for such establishment. Council must refer proposed setback ordinance to the city planning commission for report, and no action may be taken by council without first obtaining this report from the city planning commission unless such report is delayed beyond a reasonable time, not to exceed three months.

After introduction of an ordinance establishing building lines, the street superintendent must post notices along the streets affected, at least one notice to each block, which notices "shall state the facts in the case in concise language" and include a statement of the date and place of hearings on the ordinance. Written protests may be filed at any time before the hearing. At the hearing council listens to and passes upon all protests, and its decision is final.

Upon passage of a building line ordinance, it becomes unlawful for the building inspector to issue any permit for erection of any structure between the setback line and the street line. Violations of established building lines are punishable by fine and/or imprisonment.

Approximately six miles of building lines have been established under this ordinance.

Los Angeles. A major traffic street plan was adopted by popular vote in 1924, and since then it has been revised and extended by the planning commission to all proposed and existing major and secondary highways throughout the city. This is being done under the general planning enabling act passed in 1929.[1] Several of the precised maps covering portions of the plan have been adopted by the planning commission, and one has been adopted by ordinance of city council.

Instead of using the eminent domain procedure outlined in the California enabling act, however, the Board of City Planning Commissioners is recommending the establishment of building lines along primary and secondary highways of the major traffic street plan as authorized by a police power ordinance [2] similar in character to that used in the city of Berkeley. Procedure thereunder, also very similar to that of Berkeley, is as follows:

(1) Establishment of lines may be initiated by citizen petition, by the planning commissioners, or by the city council.

(2) Proposals, except those initiated by the planning commissioners, must be referred to the planning commissioners for report.

(3) Public hearings are held after "resolution of intention," at which time all protests are heard.

(4) Public hearings must be held not less than 15 days nor more than 40 days from date of resolution. Notice of hearings is published and is also posted in each block along streets affected.

(5) Council may withdraw, amend, or adopt by ordinance, building lines as declared by resolution and may so adopt over protests.

(6) After adoption of building lines by ordinance, no building or structure (with the exception of architectural ornaments, etc.) may project beyond said lines.

(7) The penalty for violation is fine and/or imprisonment.

[1] Cal. Stats. 1929, c. 838.

[2] No. 42,882 N. S. Text of this ordinance is given on pp. 217–220 of the Appendix.

This ordinance contains no provision regarding alterations to buildings already extending beyond the building lines. Neither does the ordinance provide for taking care of any cases where substantial hardship may be worked. The report from Los Angeles suggests that a major deficiency of the city's building line procedure is this lack of provision of some means whereby property owners adversely affected may be compensated for lots rendered useless by the establishment of such building lines.

Under Ordinance No. 42,882 N. S., as amended from time to time, ordinances have been passed regulating the erection of buildings along slightly more than 100 miles of primary and secondary highways. The ordinance has been in effect about twelve years, and no adverse court decisions have been rendered.[1] Compliance with the various building line ordinances is reported to be excellent.

San Diego. This city formerly used and still uses police power procedure, establishing building lines in each case by specific ordinances similar to those of Berkeley and Los Angeles. Attempt was made to proceed in establishing building lines under the partial eminent domain provisions of the 1929 enabling act, but the two ordinances of this kind which were passed met with so much opposition and misunderstanding that the city has reverted to the previous method of establishing building lines.

There have been no court cases. A total of 17 miles of building lines has been established under police power ordinances. Some of these lines have been established for more than six years, and, since the adoption of the major street plan, building lines have been required in conformity with the recommendations of the plan. Satisfactory results are reported.

Santa Barbara. Procedure in Santa Barbara is under the police power and is very much the same as that in Los Angeles, Berkeley, and San Diego. It has been in operation for about eight years with no court cases and with excellent success reported. A copy of a typical building line ordinance for a Santa Barbara street under the police power is given on pages 221–222 of the Appendix.

The following is a quotation from a statement by Mr. Wallace C. Penfield, Engineer of the County Planning Commission:

[1] The decision in the case of Thille *v.* Board of Public Works, 82 Cal. App. 187, 255 Pac. 294 (1927), upheld the city's right to establish building lines under the police power. For a summary of this case, see pp. 127–128.

TABLE IV

BUILDING LINES ESTABLISHED IN SANTA BARBARA, CAL.

Name of Street	Ordinance Number	Date of Adoption	Depth of Setback in Feet	Average Depth of Lots in Feet	Type of Street	Number of Exceptions Allowed	Remarks
Anacapa Sola to Blvd.	1277	12/8/25	10	100–225	Wholesale Commercial	1	
Montecito State to Milpas	1290	3/19/26	10	100–225	Business and Industrial	0	Used at present as truck route.
Haley State to Milpas	1291	3/19/26	10	100–225	Business and Industrial	0	
Montecito State to Rancheria	1294	4/25/26	10	100–225	Industrial	1	Main connection to Mesa District.
Milpas Anapamu to Cabrillo Blvd.	1297	5/1/26	10	100–225	Local Business	2	Used as truck route and will be included in new through-traffic route.
San Andreas Canon Perdido to Mission	1303	6/20/26	10	100–225	Residence	0	Anticipated connection to N.–S. traffic streets, never built and probably never will be.
Canon Perdido Quarantina to Milpas	1304	3/20/26	10	100–225	Vacant	0	Setback for 2 blocks only; recently completed as a crosstown artery.
Chapala Mission — Anapamu — Montecito to Blvd.	1325	3/7/27	10	100–225	Residence and Business	0	Partially widened; a growing commercial street.
Salinas Cacique to Coast Highway	1326	3/7/27	10	100–225	Residence	0	Present truck route.
Cacique Salinas to Quarantina	1326	3/7/27	10	100–225	Residence	0	On present truck route.
Anapamu State to Milpas	1327	3/9/27	10	100–225	Business and Residence	0	Bears heavy local traffic downtown from high school and eastside residential districts.
De la Vina Hollister	1388	5/12/28*	10	100–225	Residence and Business	0	Present N.–S. main artery for through traffic.
E. Cabrillo Blvd. State to Santa Barbara	1400	6/29/28	10	100–225	Business	0	For business frontage on Cabrillo Blvd. along ocean front.

* Date of amendment of an earlier ordinance which had required a 15-foot setback.

A total of thirteen ordinances are in existence in the City of Santa Barbara for the purpose of providing setback of buildings on private property along certain streets. The setbacks are, in all cases, designed to anticipate a widening proceeding at some future date in order that the street may accommodate an increased volume of traffic. Therefore, all the setback ordinances have been applied to streets which either were heavy traffic carriers at the time of the adoption of the ordinance or which were expected to be as a result of some change in the city street layout.

The basis of most of the ordinances in effect at the present time is the Major Traffic Plan adopted by the City Planning Commission in 1924.

With two exceptions, all the streets in the original plat of the City of Santa Barbara (made in 1853) were 60 feet in width, with blocks laid out 450 feet square. The latter dimension has proved to be very awkward under modern conditions, as one half the block depth (225 feet) is too much for an average city lot, and causes large unused spaces in the center of the block. To overcome this difficulty, in some instances a 50-foot street has been run through the middle of the block to obtain four tiers of lots 100 feet in depth. The latter practice has been possible only when an entire block was subdivided at one time and in many cases has proved unsatisfactory. Therefore, on the ordinary street in Santa Barbara, the depth of property varies from 100 to 225 feet, and often more, as the majority of land parcels in the block were sold piecemeal.

The setbacks are uniformly 10 feet, which would permit an ultimate right of way of 80 feet. In only one instance have widening proceedings actually taken place, *i.e.*, on Chapala Street in the downtown business district. None of the through-traffic streets, such as De la Vina, Milpas, Montecito, or Cacique streets, have been widened or improved, and, due to the steady depreciation of residential values on them, there has been considerable demand for the establishment of a definite through-traffic route. Accordingly, a new through-traffic boulevard has been planned, but will not follow any of the setback streets except five blocks on Milpas Street and will be acquired and built by the State Highway Commission. This will not only change the through-traffic flow on most of the streets with setback ordinances, but will affect a considerable amount of local traffic. However, all the streets so regulated are important ones, and the setbacks will continue to be valuable in preserving adequate street widths for commercial areas.

As might be expected, no great difficulty has arisen in enforcing the ordinances within residential sections or neighborhood commercial centers. The only difficulties have occurred where the property affected was next to a non-conforming building or, as in two instances, where the grade of the property was several feet above that of the

street level and the building being built was obscured by the high bank of the adjacent property. In both cases the new building was planned so that in the event the widening actually took place, the encroaching portion would be converted into an arcade. The Building Department has had comparatively little difficulty in enforcing ordinances, and the few exceptions have been granted by the City Council.

In residential sections, the setbacks are less rigorous than those imposed by the Zoning Ordinance and create no hardships, but in the business districts it is well known that the ten-foot setback of a commercial building is a considerable handicap to the owner. Due to the fact that these ordinances were placed in effect very soon after the 1925 earthquake, when the town was really being rebuilt, minimum hardships have resulted because there are comparatively few nonconformers.

Detailed data regarding building lines established in Santa Barbara during the past several years are contained in Table IV, page 55.

Kern, San Mateo, and Santa Clara Counties. Procedure in these counties differs slightly from that used anywhere else in the country and is worth describing in some detail, although the procedure has been in operation for too short a period for any considerable body of experience to have accumulated.

Basic authority is deemed to be the general police power granted under Article XI, Section 11, of the California Constitution.[1] The eminent domain provisions of the California planning law of 1929 seemed impracticable and unworkable, and procedure provided for thereunder has not been followed to any extent.

General procedure for Santa Clara County is as follows:

(1) The master plan is adopted by the County Planning Commission.

(2) "Official plan lines," based on the master plan, are adopted by ordinance of the County Board of Surveyors for sections of the street and highway plan.[2] The ordinance instructs the county surveyor to have recorded with the county recorder a full, true, and correct map of the official plan lines established by the ordinance and of each map of official plan lines to be added to the ordinance by later amendment.

(3) The county surveyor is instructed to post permanent notices at intervals of not more than 2000 feet along each street and highway for which official plan lines have been established under the ordinance, the wording of the notices to be as follows:

[1] See p. 187 of the Appendix.

[2] Text of this ordinance is given on pp. 222–225 of the Appendix.

The width of this street [or other appropriate designation] is established at —— feet [*or*, This highway is classified as a —— highway] according to the Master Plan of the County of Santa Clara. Keep all buildings or other structures hereafter erected outside the lines of such established width [*or*, of the established width of such highway] as shown on O. P. L. Map No. —, recorded in the office of the County Recorder, Hall of Records, San Jose, California, a copy of which is on file in the office of the County Surveyor, Hall of Records, San Jose, California.

(4) The official plan line ordinance provides that the County Board of Supervisors shall act as a board of adjustment and shall have power, upon the recommendation of the County Planning Commission, to grant adjustments or variances where strict interpretation of the ordinance would work undue hardship. Application for such adjustment or variance shall be made to the Board of Supervisors and shall include application for a permit to erect the building, structure, or other improvement.

The three counties have adopted zoning ordinances tying in with their street and highway plans. Of these ordinances, Mr. Hugh R. Pomeroy, Planning Adviser, writes:

> The San Mateo County ordinance is comprehensive in structure and applies in detail to a series of unincorporated communities in the southeasterly portion of the County. Studies are now under way to cover in detail the unincorporated territory from Redwood City to Millbrae and from Skyline Boulevard to the Bay, and also to provide marginal zoning for the full length of Skyline Boulevard.
>
> The Santa Clara County ordinance, still partially skeleton in form, applies to the margins of Bayshore Highway for the entire extent in Santa Clara County, including a section about three and a half miles in length now under construction.
>
> The Kern County ordinance is still interim in nature, applying to the margins of the Golden State Highway along the section now under relocation for several miles northerly from Bakersfield and along a section about eleven miles in length just north of the southerly County boundary.[1]

The building lines established by the latter ordinance are solely for the purpose of requiring that roadside uses shall provide at least a part of the space which is necessary for local traffic movements incidental to the conduct of such uses, thus protecting the safety and facility of traffic movements on the highway.

[1] In a letter to the author dated March 26, 1934.

Courtesy of Ray E. Behrens

MILWAUKEE COUNTY, WISCONSIN

Courtesy of Hugh R. Pomeroy

SANTA CLARA COUNTY, CALIFORNIA

PLATE II. PUBLIC NOTICES OF ESTABLISHED WIDENING LINES ON COUNTY HIGHWAYS

The following regulations for commercial and industrial districts from the San Mateo County zoning ordinance will show the manner in which the building lines are tied in with the "official plan lines."

> No building shall hereafter be erected, nor shall any use of land be conducted except the use of land for agricultural purposes, so that the same will be closer to the right of way line of any street than any Official Plan Line or any building line which has been established for such street by the Street and Highway Plan of the County, or than any future width line or building line which may be specified therefor by the provisions of Section 28 or Section 29, respectively, of this ordinance.

Other regulations for residential, agricultural, and general highway frontage districts are given in the Appendix, pages 220–221.

One of the highway signs used in Santa Clara County to give notice to prospective builders is reproduced on Plate II.

Los Angeles County. Building lines are established for particular streets by ordinance under the general police power. These ordinances are drawn in accordance with detailed legal descriptions covering each of the major highways. The lines are those established for this purpose by the surveyor's office, in accordance with the regional highway plan. First attention is given to those streets running through relatively open but rapidly developing territory, the ordinances being called to the attention of each prospective builder who comes into the office for a permit. The county reports almost no protests from builders, no violations, and no efforts to carry the matter into the courts, as "such ordinances seem to be in favor with the property owners and the public in general."

This type of procedure has been in operation since August, 1923, and is very much like that followed by the cities of Berkeley, San Diego, Los Angeles, and Santa Barbara.

Building lines are not established uniformly for the two sides of the highway nor at any uniform depth but are determined for each street and highway, or separate portions thereof, according to individual requirements.

In the case of streets which are shown on the major highway plan as destined to be widened but for which ordinances establishing new building lines have not yet been drawn and passed, the county office tries by persuasion to prevent building in front of the widening lines and reports considerable success in securing coöperation from prospective builders.

DELAWARE

Wilmington. Establishment of building lines in this city is essentially a part of the protection of reservations for future streets and is discussed on pages 82 and 83.

ILLINOIS

According to information furnished by the Regional Planning Association of Chicago, police power building lines, in addition to those established for street widening purposes under zoning and already referred to in this chapter,[1] have been successfully established in Illinois under two other methods:

(1) Designation of a system of streets with established building lines. Barrington, Cicero, Crystal Lake, Elmhurst, Libertyville, Mundelein, and Westchester have used this method, passing their ordinances after public hearings and with precautions to avoid court tests of constitutionality. As Mr. Howard R. Olson of the Chicago Regional Planning Association points out, the success of this method depends upon the satisfaction and coöperation of the property owners.

A sample ordinance, passed by Libertyville, is given in the Appendix, page 227. It is a frank expression of purpose and also very definitely ties in the establishment of building lines with the carrying out of the town plan. Another point of interest is that the ordinance is to be regarded as "supplementary to the zoning ordinance and building code of the Village of Libertyville," and violations are to be treated "in the same manner as violations of the zoning ordinance and building code."

(2) Establishment of building lines on certain streets by specific ordinance to take care of desired street widenings. Among the 40 municipalities reported to have proceeded in this manner are: Arlington Heights, Berwyn, Blue Island, Deerfield, Downers Grove, Kenilworth, Oak Park, Park Ridge, and Wheeling.

The county administrations of Cook County and of DuPage County have adopted building line ordinances and resolutions to protect the plan of major highways of the Chicago Region. A sample document of each county is given in the Appendix, pages 225–226.

INDIANA

Evansville. At the time of writing, this city was urging passage of an amended planning enabling act and was working on master plan maps.

[1] See pp. 41–42.

When and if the new enabling act is adopted, Evansville expects to be ready to present a complete master plan showing all building lines proposed for adoption.

KENTUCKY

Lexington. Building lines established in accordance with the major street plan are unofficial and are maintained only in so far as the planning commission is successful in securing the coöperation of property owners and builders. The commission reports very fair success, however, in maintaining these unofficial lines and further reports that consideration is given to making reasonable allowance in cases where compliance would work real damage.[1]

Louisville. Under the new planning enabling act for first class cities,[2] an official map was prepared for Louisville, showing all existing conditions and was adopted by the Board of Aldermen as the official map of the city. This map was prepared from base maps supplied by the Board of Sewer Commissioners at a scale of 200 feet to one inch. An amended official map was later made by the city planning commission, using the master plan as a basis, and this was finally adopted in September, 1933. The amended map shows street lines as recommended in the master plan, and all new buildings are required to conform to indicated street widths and street locations.

Prior to the adoption of the amended map, considerable effort was made to protect the planned street widths and the future street locations through persuasion. Building permits were not granted for encroaching buildings until full explanation had been made to owners and warning given that the city expected to widen the street or to build a new street in the proposed location. With the adoption of the amended official map, protection of future street lines has, of course, become much simpler. Since adoption, only two cases have come before the Board of Adjustment and Appeals seeking variance. One application was denied and the other was granted "because of the fact that the applicant's property was situated between two buildings already constructed to the street line. In the latter case the applicant signed an agreement that he waived all damages to that part of his building lying within the mapped street if the city needed the property for street widening purposes." [3]

[1] See p. 43 for Lexington's building line experience under zoning.

[2] Ky. Laws 1930, c. 86.

[3] From a letter to the author from Mr. H. W. Alexander, Secretary of the Louisville City Planning and Zoning Commission, dated Sept. 24, 1934.

The city ordinance adopting the present official map is given in the Appendix, page 228.

MICHIGAN

Detroit. A recent amendment to the city charter authorizes the establishment of building lines under the police power. The city has not taken action under this amendment chiefly because of an opinion by the city attorney that the amendment is unconstitutional. The amendment provides that ordinances passed in accordance therewith shall fix proposed building lines and shall not be repealed except by consent of, or by compensation to, property owners affected. No method of procedure is provided, and no provision is made for compensation to property owners who may suffer damage.

Building lines have, however, been established under the police power on several main streets in the city and with effective results. In some instances these are more or less unofficial lines fixed by the planning commission, and in other instances they have been established by city council incidentally to filing condemnation proceedings.

In the case of the unofficial lines fixed by the planning commission, the building inspector is notified of the proposed building line to be established to take care of future street widening. After such notification, the building inspector stamps a statement to this effect on every building permit issued for buildings to be erected on such streets, making the permit conditional upon compliance with the building line or lines so indicated.

In the case of building lines established by council upon filing of condemnation proceedings, there is a recital upon all building permits to the effect that the street in question is to be widened from —— feet to —— feet and that thereafter all buildings erected on land to be taken in such widening shall be erected at the owner's risk.

Eight miles of Livernois Avenue, to take one example of a street with building lines established by council and protected by notice on building permits, were widened from 66 to 120 feet, with equal amounts taken from both sides of the street. Lots along the street before widening averaged about 100 feet in depth.

This street was originally planned to be widened to 100 feet, and a number of buildings complied with the first plans. Afterwards the 120-foot width was established. At the time of widening, the city paid for projecting portions of buildings built to the 100-foot line and paid full

value for all land taken. Since then about 100 buildings have been set back to the 120-foot line. No damage claims against the city have resulted from the establishment of these building lines.

Flint. This city has had excellent success with a simple but probably not too generally applicable procedure under the police power in establishing building lines. Its blanket ordinance of 1916 establishing building lines is simply a prohibition against erecting any building closer to the street line than any other building in the same block fronting on such street, unless permission to do so is granted by the council of the city.

A separate ordinance, No. 301, passed in 1922, established building lines on a few streets where the planning board anticipated the necessity of future widening. Enforcement was with the building inspector. A total of two or three miles of building lines was established by this ordinance, and these lines have been successfully maintained. Mr. Otto K. Philipp, Engineer in the Department of Public Works and Utilities, says:

> There seems to be a willingness on the part of property owners to comply with these requirements, which in our judgment do not lessen the value of their property. We know of only one instance, and that a very recent one, where this restriction was violated and in this case the builders secured waivers from neighbors on either side permitting them to enclose an existing porch which projected out beyond the established building line.[1]

The State Highway Department has recently requested the city to establish a setback along two of the principal trunk line highways through the city to provide for widening them in the future. The City Planning Board expects to make a recommendation to the City Commission for the granting of this request, which, Mr. Philipp reports, will not be difficult to enforce since none of the buildings at the present time are nearer than the line requested, owing to the enforcement of the present zoning ordinance.

NEW YORK

Rochester and Schenectady are the outstanding examples, thus far, in the matter of experience under the new city planning act.[2] Both cities have been at work for some time on complete plans, and their procedure is worth examining in some detail.

[1] In a letter to the author dated Oct. 21, 1933.
[2] Laws 1926, c. 690. See Appendix, pp. 200–205.

Rochester. In proceeding under the 1926 law, Rochester went forward upon the basis of an already prepared general plan and major street plan in the usual diagrammatic form. Recognizing the ultimate necessity of having accurate topographic maps, the city secured United States Geological Survey maps and worked with the Federal Government in the correction of these sheets by traverse and triangulation survey. A complete and relatively accurate map of the city, showing all existing streets, was made and adopted as the official map of existing conditions under the 1926 enabling act. This procedure was merely a first step in the city's general program of making a comprehensive and precise city plan. In studying and mapping the planning proposals, the planning commission was guided by the diagrammatic master plan which had previously been prepared, making such changes as were shown to be necessary by more precise surveys. Building lines were fixed by accurate surveys and studies for each street, and after the major street plan was laid down on the official map of existing conditions, this map, as thus amended, was adopted by city council as the official map of the city of Rochester.

The final official map was not adopted until 1931, and business conditions since then have been such that there has been no real test of the building lines. Building construction in the city has been at a low ebb, but such buildings as have been constructed are generally conforming. In cases of protest the planning commission has permitted property owners to build a one-story false front to the old street line, at the same time requiring the signing of a contract to the effect that the city will not be held liable for damages when the street is finally widened. In such cases two permits are issued, one for the portion of building in front of the established line and one for the portion of building back of the established line.

There are about 119 miles of building lines established by the official map, and considerable effort is being made to create general public understanding and coöperation in the administration of these lines.

Formerly, building lines were established under eminent domain provisions in the city charter. Only about one mile of building lines so established is now in existence, and the method was considered most unsatisfactory.

The present general procedure is for the owner of a prospective building to apply for a building permit, and if his building falls within the lines of a street on the official map he is refused his permit to build

until his application is revised. If he protests, he may appeal to the board of adjustment for hearing, consideration, and adjustment of his complaints.

There is little apparent criticism to be made of the Rochester procedure. The basis seems reasonable. The maps are precise and carefully drawn. The establishment of the building lines has been done in accordance with a general and comprehensive city plan, and it would seem that the city could look forward with much confidence to defending its position successfully in any possible court procedure, so long as the administration is handled as successfully and intelligently as the foundation upon which the building line establishment seems to have been laid.

Schenectady. This city had a complete topographic survey made, not only of the city itself but of adjacent territory. Upon the completed topographic map the planning commission laid down its official plan of the city, showing ultimate street widths and a complete system of future streets — minor as well as major — for all undeveloped areas. The plan as worked out by the planning commission was adopted as a whole by the city council. It will be noted that this procedure differs from that of Rochester, which first adopted an official map showing existing conditions and later an official map showing the proposed changes and future proposals as an amendment to the first official map. Since the ultimate legal status of both maps is precisely the same, it is difficult to see why there should have been any legal necessity for this variation in procedure. Rochester's procedure is obviously somewhat more cumbersome and more costly.

Administrative procedure in Schenectady is the same as that in Rochester, with the building inspector charged with the prevention of violations of the building lines. There have been numerous cases of protest, and many variances have been granted by the board of adjustment where, presumably, unusual hardship has been shown. The problem in Schenectady is particularly complicated due to the age of the city and to the fact that, over a long period of years before the adoption of the official map, the inaccuracy and incompleteness of old deed records and surveys had made the exact locations of street lines difficult to determine, with resulting frequent encroachments on public streets and numerous jogs in and departures from original street alignments, especially in the business district. A situation of this sort is not changed overnight. Since the adoption of the official map, there have been many minor violations of the building lines but only one of importance, and public

opinion is said to be already reacting against this one. As in Rochester, there have been few new buildings erected since adoption of the official map and, therefore, little real testing of the plan and of its administration.

White Plains. The city has adopted a master plan but not an official map as defined in the planning law of 1926. The procedure here is very similar to that in Louisville, Ky. Building lines are established by the planning commission in accordance with the recommendations of the master plan, and the building inspector is charged with their enforcement. However, no attempt has been made to establish such building lines in the main business district, where it would seem that they are sadly needed, nor in industrial districts. No serious effort has been made by the city to prevent violations of the building lines except along a section of the Boston Post Road at the edge of the city, where a 10-foot setback has been fixed on both sides of the road. It is being observed and has already considerably reduced the probable cost of ultimate street widening.

OHIO

Cincinnati. Cincinnati's city plan was officially adopted by council in 1925, and in 1929 council passed a police power ordinance for the regulation of mapped street lines and of buildings.[1] This ordinance provides that the city planning commission may from time to time make plats showing the location of proposed lines of streets in any portion of the city, and may transmit such plats to council, together with an estimate of the time within which the land shown thereon as street locations should be acquired by the city.

After holding hearings upon any proposed plat, council may by resolution adopt, modify, or reject such plat. If it is adopted, a copy must be filed with the county recorder, but such adoption is not to be deemed the opening or establishment of any street or the taking of any land for street purposes or for public use. After the recording of such a plat, no permits for buildings to be erected within the lines of the proposed streets may be issued for a period of 20 years. Property owners who feel injured may take an appeal to the board of zoning appeals, which is empowered to direct the issuance of a permit in cases where it finds that "balancing the interest of the City in preserving the integrity of the City's plan as evidenced by such plat and the interest of the owner of the property in the use of his property and in the benefits of the ownership thereof, the grant of such permit is required by considerations of reasonable justice and equity." [1]

[1] Ordinance No. 435, 1929.

Erection of a building in violation of the terms of the ordinance is a misdemeanor, and a fine not to exceed five hundred dollars may be imposed therefor.

The ordinance explicitly states that its provisions apply equally to street widenings or extensions and to new streets. No plat had, at the time of writing, been adopted by council under this ordinance.

Cleveland. Prior to adoption of the zoning ordinance in 1929, a simple building line ordinance had been in effect since 1922 and was upheld in the case of *Weiss v. Guion.*[1] Procedure under this ordinance was very similar to that under a zoning ordinance. A special building line map was prepared dividing the entire city into two building line districts as follows:

(1) Residence districts, where building lines, inclusive of porches, were placed at 15 per cent of the depth of lots.

(2) Non-residence districts, in which no building lines were established except on specified main thoroughfares, where setbacks ranged from 5 to 25 feet.

The zoning ordinance adopted in 1929 followed very much the same procedure, retaining the old building lines and making added restrictions. The building line map was adopted as part of the zoning ordinance, and complaints are taken to the board of appeals.

OKLAHOMA

Oklahoma City. No official procedure exists, but the city planning commission has been fairly successful in maintaining building lines by persuasion and by bargaining with property owners. The city has a major street plan, but this is entirely unofficial. It has not been adopted by city council and is not a part of the master plan as the term is defined by the new planning enabling acts. The zoning ordinance requires 12½-foot setbacks from street lines in business districts. These are being maintained and are meeting with the favor of property owners, who find that the setbacks provide good parking places.

TENNESSEE

Memphis. Procedure here also is largely unofficial but seems highly successful. The city has a major street plan, which the planning commission uses as a guide for the establishment of building lines on streets or portions of streets where lines are not established as front yard lines

[1] For a summary of this case, see p. 125.

under zoning. Lines of the latter kind extend throughout the residential districts of the city and are deemed adequate protection for possible future widenings of streets without superimposition of special widening lines. Building lines established specifically for street widening purposes are limited to major streets or to those proposed to be widened in the major street plan. Equal setbacks are established on both sides of a given street. Neither the major street plan nor the building lines indicated for the protection of this plan have been officially adopted by city council, but the building lines are assumed to have, and are administered as having, the same status as front yard lines provided by the zoning ordinance. Procedure in administration is as follows.

The planning commission advises the building inspector as to building lines adopted by the commission, and thereafter the building inspector refuses to issue building permits for nonconforming buildings. The owner is advised of the established building line and, if unwilling to conform to it, is instructed to appeal to the Zoning Board of Adjustment. If the owner can show that real damage or injury will result from observing the building line, it is the policy of the Board of Adjustment to allow him to build a temporary structure out to the street line, of a character to minimize cost to the city upon later condemnation and removal. There are no reported cases of violation of these lines so administered, and this procedure is generally accepted as a matter of course.

Memphis had previously developed and used a special eminent domain procedure.[1] This proved quite satisfactory but is reported to have fallen into disuse largely because the later method, described above, is less expensive, faster, and more efficient. The unofficial character of present procedure naturally makes the city reluctant to take a case into court, but so far this has not been necessary, chiefly, it would seem, because of the apparently reasonable and just attitude consistently assumed by the administration toward builders.

TEXAS

Dallas.[2] Building lines for future widening purposes are established by specific resolutions of council (see Appendix, pages 232–233, for text of a typical resolution) and depend largely upon moral force. Nevertheless, the procedure works reasonably well and probably would be quite effective if the city had a completed comprehensive master plan and

[1] For text of permissive legislation, see pp. 212–213 of the Appendix.

[2] See also the discussion of the case of Halsell *v.* Ferguson on pp. 119–120.

official map. The lack of such plan and map necessarily weakens the city's position in enforcing its building line resolutions. The attempt is made to persuade owners to comply with the new building lines, but if they insist on building in front of the lines they are permitted to do so.

The setback provisions in the zoning ordinance, however, appear to have been fixed with future street widenings in mind. Setbacks are required of all stores in neighborhood business districts.

Fort Worth. Fort Worth's charter contains the following paragraphs authorizing the establishment of building lines under the police power:

> Section 5. That in addition to the powers provided by the above and foregoing section, the City of Fort Worth shall have the further power, for the purpose of promoting the public health, safety, order, convenience, prosperity and general welfare, acting through its governing authorities, under the Police power, to provide by suitable ordinance building lines on any street or any block of any street and to require their observance by suitable penalties.

Fort Worth has a major street plan showing streets proposed to be widened, and ordinances passed by council have been drawn in accordance with the recommendations of the major street plan. A majority of the streets proposed for widening have been covered by ordinances already passed, but it is probable that no more ordinances will be presented to council in the immediate future because of recent protest by individual property owners affected by one ordinance.

The location of building lines is determined in general by the planning engineer, and the lines are not uniformly established on both sides of the street. The establishment of each building line is determined as a separate problem. After the passage of an ordinance, the city engineer's office is furnished with a copy or memorandum statement, and the city engineer then draws up a street map showing the lines established. A blueprint of this is given to the building inspector, who keeps a file of streets for which ordinances have been passed. When application is made for a building permit, the inspector checks the proposed location with the blueprint for that street. If the proposed building extends beyond the established building line the owner is notified of the requirements, and if he protests he is sent to the planning commission for hearing. The planning engineer tries to secure the understanding and coöperation of the builders. In cases where the owner is very persistent, or where real damage seems to occur, variance is made upon agreement of the property owner that if the street is finally widened he will not ask for

damages for any portion of a building erected under the terms of the variance. This agreement is a simple contract drawn by the city attorney's office. Agreements are also sometimes made that if the city widens within a stipulated time it will pay damages, but if the widening is deferred beyond this period the city will not pay damages. Actual violations have been comparatively infrequent, but if an owner persists in refusing to comply, nothing is done about it.

Details of the administration of building line ordinances have been admirably worked out in Fort Worth. The filing system, the contractual agreements between the city and the property owners, the mutual coöperation between the planning commission, the city engineer, the building inspector, and apparently also the city attorney's office, all seem particularly efficient. The weakness of the system lies in the lack of general public understanding of the problem involved and the failure of the city administration to take action in specific cases of violation. Every violation creates a bad precedent which probably will weaken the city's position if and when a case is finally taken to court. It is the opinion of this author that the lack of uniformity in working out the location of building lines must also render the city's position more vulnerable in possible court action. On the other hand, it would seem that the general procedure is entirely in line with other police power procedure in the country and capable of being sustained in the courts on the same grounds as other similar procedures have been.

VIRGINIA

Richmond. Although it was one of the first cities to undertake the establishment of building lines under the police power, Richmond has been unable to make much progress since the courts declared the first two building line ordinances to be unconstitutional as to method of establishment.

Under the state law of 1908,[1] Richmond passed a building line ordinance providing that

> whenever owners of two-thirds of the property abutting on any street shall, in writing, request the committee on streets to establish a building line on the side of the square on which their property fronts, the said committee shall establish such lines so that the same shall not be less than five feet nor more than thirty feet from the street line.

[1] Va. Acts 1908, c. 349, § 1038.

Courtesy of L. W. Hoelscher

BUILDING LINES IN OPERATION IN FORT WORTH, TEXAS

HOTEL IN DETROIT, MICHIGAN, HELD BACK TO THE BUILDING LINE, BUT WITH A TEMPORARY ONE-STORY STRUCTURE EXTENDING TO STREET LINE PERMITTED PENDING ACTUAL WIDENING

PLATE III.

This ordinance was intended primarily to provide for privacy in residential districts. In the case of *Eubank v. City of Richmond*, the favorable decision rendered by the Virginia courts was later reversed by the United States Supreme Court on the ground that the method as provided in the ordinance was unconstitutional and constituted an improper delegation of authority.[1] The right of the municipality to establish building lines was not, however, denied.

A later ordinance passed by the city in 1913 was similarly declared unconstitutional.

WISCONSIN

Milwaukee County. In 1926 building lines were established in Milwaukee County upon all state, prospective state, and county trunk highways. The establishment of the lines consisted essentially in a declaration of intention on the part of the county to widen the highways at some future date. The resolution of adoption is recorded in the office of the Register of Deeds and appears on each individual abstract in so far as that ownership may be affected. The county planning department is empowered to appoint a building inspector with authority to issue permits to build. At the time of application for permit, the inspector makes clear to the prospective builder the proposed future line of the highway and refuses to issue permits for buildings projecting beyond the established lines. The general public is convinced of the need and desirability of the wider highways, and the commission has had very little trouble and no cases taken to court. The chief difficulty has been with gasoline filling stations desiring to encroach on the established lines. In cases where the building inspector has issued permits for such stations, the commission has obtained sworn statements in writing from the owners, stating that at such time as the land is to be acquired or used for highway purposes the buildings will be moved back at no expense to the county.

There have been no claims for damage because of the establishment of the building lines.

Notices are erected by the county along the highways on which building lines have been established, stating the ultimate width of the highway and warning property owners to keep buildings and improvements back of the building line. A photograph of one of these notices is shown on Plate II, facing page 58.

[1] For a summary of this case, see pp. 132–133.

PROTECTION OF THE BED OF MAPPED STREETS

As has been repeatedly stated in this study, the establishment of building lines as boundaries of street reservations is merely a particularized form of mapped street establishment, but, since many cities do establish building lines for future widening of streets already existing and partly built up, but do not extend any protection to the rights of way of future streets which may be merely shown on maps or plans and which are not yet owned by the city, it has been convenient for the purposes of this research to separate the discussion of the two processes. Pennsylvania is almost the only state in which such separation has not been necessary, nor, indeed, possible.

Municipal Procedure in Pennsylvania. In the early history of the United States, the right of a community to proceed under the police power to prevent the erection of buildings in the bed of a mapped street was accepted as a matter of course, and Virginia, Massachusetts, New York, Maryland, and Pennsylvania all pursued such a policy. As soon as it was decided that a road would some day be needed in a certain location and the decision was recorded in the form of vote or resolution by the governing body, it became illegal for anyone to erect a building or structure within the lines of the proposed street, and the city was held to be not liable for damages incident to the removal of any building or structure so erected. A growing tenderness toward the institution of private property on the part of the courts resulted in numerous decisions which had momentous results for municipal street systems in this country.[1] The substance of these decisions was that the establishment of the lines of future streets in this fashion, and the prohibition of the payment of damages for buildings erected after such establishment, was in effect a taking of private property for which compensation must be made. Case followed case, until Pennsylvania was left almost alone in its support of police power procedure. Just why the Pennsylvania courts have so consistently upheld the police power of municipalities in this particular respect the writer does not know. The fact remains that they have, through a long period of years. There have been notable exceptions among the Pennsylvania decisions, but the unfavorable decisions have been rendered on the ground that the circumstances surrounding the case in question made the application of the law unconstitutional, and not that the law itself was unconstitutional.[2]

[1] For details of these cases, see pp. 121–123.

[2] For a summary of such a case, see p. 131.

In reply to our question as to how long the protection of mapped streets had been in operation, one Pennsylvania engineer wrote: "The memory of man runneth not to the contrary." Indeed, this is almost true. The first protection for mapped streets is to be found in the Minutes of the Provincial Council of Pennsylvania;[1] and what is now known as the General Plan Act of Pennsylvania was passed in 1891.[2] It included the simple statement which has so effectively prevented encroachments on the bed of mapped streets in Pennsylvania and which may be found in substantially the same form in the various planning laws of the state.

> . . . No person shall hereafter be entitled to recover any damages for any buildings or improvements of any kind which shall or may be placed or constructed upon or within the lines of any located street or alley, after the same shall have been located or ordained by councils.

A "located" street as used in this clause is the same thing as a "mapped street" as that term is used in this research. The location does not authorize the entry upon or taking of any property within such located street or alley, nor shall it interfere in any way with the rights of the owners to the full use of such property.

Typical provisions of the Pennsylvania laws relating to mapped streets in boroughs, townships, cities, and to future state highway locations, are given in the Appendix (pages 205–212). Long before city planning, in the sense in which we now use the term, was generally practised, the General Plan Act of 1891 (Sec. 12) required that every municipality in the state should have

> a general plan of its streets and alleys, including those which have been, or may be laid out but not opened; which plan shall be filed in the office of the engineer or other proper official of the municipality, and all sub-divisions of property thereafter made shall conform thereto.

In Philadelphia the Board of Surveyors has long held, with respect to streets, much the same powers that modern city planning commissions are given, with additional and more drastic powers. In fact, the Board of Surveyors is the final arbiter of the street system.

> Street plans are made under the supervision of the Board of Surveyors, and it sits as a court in considering their merits and confirming them; a plan confirmed by it must be conformed with in making all

[1] Vol. I, p. 523, May 30, 1698.
[2] Pa. Laws 1891, Act 59, p. 75.

public and private improvements and cannot be changed except under authority of Council.[1]

This Board of Surveyors in Philadelphia is a survival from earlier times and corresponds fairly closely to boards of survey in Massachusetts. In other Pennsylvania municipalities, consideration and confirmation of street plans are by council.

It seems evident from the above, and becomes increasingly evident upon reading the clauses of the various Pennsylvania planning acts, that it was from the beginning of the state's existence intended and expected that all municipalities should have at least a street plan which should be constantly added to and revised as need arose, and that this street plan should be adequately protected from encroachments in the form of buildings or improvements which would add to the city's costs when the time for acquisition of the new streets finally arrived. Not all of Pennsylvania's municipalities do have street plans, much less the comprehensive plans provided for by later legislation. Many of them, however, do have such street plans and are protecting them without difficulty.

The Pennsylvania procedure is not especially complicated, except possibly for the city of Philadelphia. Certainly it is no more so than procedure under the New York planning law of 1926, for example, nor under the Standard Planning Act's alternative police power provisions for protection of mapped streets. Procedure in the city of Philadelphia is described by Mr. Thomas Buckley, Assistant Chief Engineer of the Bureau of Engineering, Surveys and Zoning, as follows:

> The Philadelphia city plan is prepared and administered in the Bureau of Engineering, Surveys and Zoning, Department of Public Works, by the Board of Surveyors. The Board consists of the Surveyors and Regulators of the eleven survey districts into which the city is subdivided, the Chief Engineer and Surveyor, and the Assistant Chief Engineer and Surveyor of the Bureau of Engineering, Surveys and Zoning.
>
> City plan ordinances frequently originate within, or are drafted by, this Bureau. Others, which originate outside, are framed in accordance with advice obtained by consultations with the Bureau. Few ordinances on city plan changes and additions are introduced without first being referred in some way to this Bureau.
>
> Ordinances authorizing city plan changes and additions generally relate to one of six different processes, namely:

[1] Pennsylvania Dept. of Internal Affairs, Bulletin of the Bureau of Municipalities, Sept. 1921.

SURVEY NOTICE

NOTICE IS HEREBY GIVEN THAT THE BOARD OF SURVEYORS HAS FIXED UPON

MONDAY, NOVEMBER 6, 1933

at 2 o'clock P. M.

AT ROOM 1222, CITY HALL ANNEX

For a hearing of All Parties Interested in the Confirmation of the Following Plans:

No. 337. To strike from the City plan LEONARD STREET, from FAUNCE STREET to the ROOSEVELT BOULEVARD and to place on the City plan FAUNCE STREET, from LEONARD STREET to the ROOSEVELT BOULEVARD, and to revise the lines and grades of adjacent streets affected by striking said LEONARD STREET from the City plan and placing FAUNCE STREET on the City plan.

Nos. 346 347. To revise the lines and grades of OXFORD PIKE so as to restore said lines and plans of OXFORD PIKE as they existed prior to the passage of the Ordinance of Council approved April 17, 1930, and confirmed by the Board of Surveyors October 6, 1930.

The said plans may be examined at the office of the First Survey District, 2010 Rhawn Street.

No. 307. To strike from the City plan and vacate APPLETREE STREET from SIXTEENTH STREET westward to the PARKWAY.

The said plan may be examined at the office of the Third Survey District, Room 421, City Hall Annex.

No. 207. To strike from the City plan PARK AVENUE from SOMERVILLE AVENUE to CLARKSON AVENUE and CLARKSON AVENUE from the east side of PARK AVENUE to OLD YORK ROAD.

No. 219. To place on the City plan GILBERT STREET from WASHINGTON LANE to UPSAL STREET.

Duplicates of the above plans may be examined at the office of the Bureau of Engineering and Surveys and Zoning, Room 1125 City Hall Annex.

DAVID J. SMYTH,
City Solicitor.

Courtesy of Thomas Buckley

FIGURE 2. TYPICAL NOTICE OF OFFICIAL MAP CHANGES IN PHILADELPHIA

(1) The preparation of a city plan covering an area not previously planned.

(2) The revision of the lines and/or grades of an existing plan.

(3) The placing of a new street upon the city plan.

(4) The striking from the plan and/or vacating of an existing planned street.

(5) The placing upon the city plan of a park and/or playground.

(6) The amendment of an existing ordinance, the authority of which has not been exhausted.

If a city plan ordinance originates in the Bureau of Engineering, Surveys and Zoning, it is transmitted to the President of Council, through the offices of the Director of Public Works and of the Mayor. Such procedure distinguishes an ordinance as being a departmental measure. Ordinances originating outside the Bureau of Engineering, Surveys and Zoning are usually introduced in Council by the councilman representing the ward wherein the proposed city plan change is located.

After a first reading in City Council, a city plan ordinance is referred to a Council's Committee on Public Works, consisting of twelve councilmen, whereupon it is immediately referred to the Bureau of Engineering, Surveys and Zoning for a report. The Bureau thereupon refers the ordinance to the Surveyor and Regulator in whose district the proposed city plan change or addition is situated. The Surveyor requests a report from the drainage division of the Bureau as to the effects of the proposed plan changes upon the existing or future drainage and sanitary systems. After the receipt of such report, he consults with the Survey District Committee. The Survey District Committee consists of the local Surveyor and Regulator and the Surveyors and Regulators of two adjoining Survey Districts, and is one of eleven similar standing committees appointed for the express purpose of passing upon proposed ordinances affecting the city plan. The Survey District Committee reviews the ordinance with respect to its form and purpose, analyzing the effects that the proposed change will have upon (*a*) the established plan, (*b*) existing physical conditions, (*c*) the present and future drainage systems, and (*d*) the city, that is, the extent to which the proposed change will increase the costs to the city (for damages, improvements, etc.) over the existing plan. Frequently this Committee makes a physical examination of the location and interviews the parties at interest.

The findings of the Survey District Committee are transmitted to the President of the Board of Surveyors by written report, carrying the signature of each member of the Committee. Such reports conclude with a resolution requesting approval or disapproval of the ordinance. If, in the judgment of the local Surveyor and Regulator and his Committee, the ordinance as introduced is improperly or incompletely drawn, or does not sufficiently protect the city, the Com-

mittee files a substitute ordinance in their report and asks for its approval.

The Board of Surveyors holds stated meetings on the first and third Mondays of each month, at which meetings Committee reports on ordinances are approved or disapproved on a majority vote. (The disapproval of an ordinance by the Board of Surveyors is accepted as final by the City Council with very few exceptions.)

After an ordinance has been voted upon by the Board of Surveyors, it is returned to the Council Committee on Public Works, together with a copy of the Survey District Committee's report, through the offices of the Chief Engineer and Surveyor of the Bureau and the Director of the Department of Public Works. This step may be the occasion, in the case of an important ordinance, for a special report on the subject by the Chief Engineer and/or the Director of Public Works.

The ordinances and reports returned to the Council Committee on Public Works are seldom acted upon immediately but are filed for future consideration by this Committee. Meetings of the Public Works Committee of Council are held at the call of the Chairman, and city plan ordinances, as a rule, are not placed on the calendar for consideration at a fixed meeting without first consulting the Bureau of Engineering, Surveys and Zoning. Ordinances for city plan changes and additions are given careful consideration by the Council Committee. The procedure includes the reading and discussion of the ordinance and the report of the Board of Surveyors and special report, if any, from the Director of the Department of Public Works. The Chief Engineer of the Bureau of Engineering, Surveys and Zoning attends all meetings of this Committee. The Director of the Department of Public Works also attends if the legislation under consideration is of unusual importance. If the circumstances warrant, the Committee may invite the parties at interest to attend the meeting of the Committee for a public hearing. After hearing all evidence, the Committee may decide to visit the location before taking final action.

Upon approval of an ordinance by the Council Committee on Public Works, it is returned to the City Council where it must pass two additional readings before final passage, after which it is forwarded to the Mayor for his signature. The Mayor, before giving such an ordinance consideration, returns it to the Director of the Department of Public Works, who in turn refers it to the Chief Engineer of the Bureau of Engineering, Surveys and Zoning for a final report. The final report requested by the Mayor is important for the reason that if the ordinance is revised in Council, after approval by the Public Works Committee, the opportunity is given the Bureau of Engineering, Surveys and Zoning to examine into and report upon the form and contents of the ordinance as proposed to be finally adopted. Upon the receipt of the final report from the Director's office, the Mayor gives the bill due consideration and may from time to time call a

meeting of the parties at interest in his office for a personal examination before a final decision is made.

The approval of the ordinance by the Mayor establishes the authority by which the Board of Surveyors is empowered to make, advertise, and confirm a city plan addition or change in accordance with the Act of June 6, 1871.

After an ordinance directing the Board of Surveyors to lay out, add to, or change any street on the city plan is signed by the Mayor,[1] the Board must make precise and detailed surveys, and the proposal must be advertised six times during the thirty days preceding action upon the street in three public newspapers of the city, and public hearings must be held, and placard notice to that effect posted in the district in which the proposed change is to be made, thirty days prior to such change. Upon the confirmation of the plan by the Board, the seal of the Board is affixed to it, and such confirmation is final.

In other municipalities of Pennsylvania the procedure is, of course, much simpler. Action may be initiated by the city engineer, the building department, the city planning commission, or the council. An ordinance placing the proposed street on the official plan of the city is passed by council, and thereafter no buildings may lawfully be erected within the lines of the mapped street, or, if such buildings are erected, the owners may not claim damages when the street is finally acquired and improved by the city. It is customary to refuse building permits for buildings proposed to be erected within the lines of such mapped streets. Scranton, Sharon, Harrisburg, and the townships of Upper Darby, Cheltenham, and Abington indicated in their replies that this in general was the type of procedure followed and that there had been no difficulties of administration or procedure.

Under the Pennsylvania procedure, the establishment of building lines for street widening is in effect a change in the street plan and is handled in the same manner as the placing of a new street or a proposed street upon the city plan.

In Philadelphia 365 miles of highways have been widened on the city plan by authorized revisions. Further details of the city's progress and methods in street widening are given on pages 142–145.

Despite the fact that the official map law is, perhaps in the majority of cities and certainly in a majority of the cities studied, also a building line law in its effect upon street widths, there have been a number of

[1] Typical ordinances of this sort are reproduced in the Appendix, pp. 229–231.

building line laws passed by the state legislature from time to time, notably one permitting all first-class townships and boroughs to establish and maintain uniform building lines upon any or all public roads, highways, lanes, and alleys within their corporate limits. Why such a law should have been necessary is not apparent to the writer. In view of the existence of the general plan law and the permissive zoning laws, another police power building line law seems only to add to the general confusion. However, this law was repealed in 1931 by the new township code. Cheltenham and Abington townships had proceeded under the repealed law but are having no trouble in carrying on without it.

No general computation of savings under the Pennsylvania laws has come to the writer's attention except in the case of Philadelphia. A few instances of economies effected in this city are discussed in Chapter VI.

General success with operation under Pennsylvania's street mapping acts, however, does not mean that municipalities of this state are immune from "unreasonable" use of the police power. A case in point is the adverse decision upon a building line establishment on Sansom Street, Philadelphia.[1] The widening line as established on this street was such as to comprise the virtual taking of many lots by preventing their use to so large an extent as to render these lots valueless.

State Highway Procedure in Pennsylvania. The State Highway Department, since 1921,[2] has had the same power as municipalities in establishing building lines on highways under its control; since 1925,[3] it has had powers for the protection of future highway locations. The following is the pertinent clause from the law of 1921:

> The State Highway Commissioner shall also have power, with the approval of the Governor, to establish the width and lines of any State Highway before or after the construction, reconstruction, or improvement of the same, not, however, exceeding the maximum width fixed by law for public roads. Whenever the State Highway Commissioner shall establish the width and lines of any such State Highway, he shall cause a description and plan thereof to be made, showing the center line of said highway and the established width thereof . . . .
>
> No owner or occupier of lands, buildings, or improvements shall erect any building or make any improvements within the limits of any State Highway the width and lines of which have been established and

[1] For a summary of this case, see p. 131.
[2] Laws 1921, Act 62, § 8, as amended by Laws 1929, Act 62, § 8.
[3] Laws 1925, Act 382, § 3.

recorded as provided in this section, and, if any such erection or improvement shall be made, no allowance shall be had therefor by the assessment of damages.

This law is commonly known as the "Ultimate Right-of-Way Law" and applies only to existing highways. It is in fact a building line law as that term is used in this report. The law of 1925 authorizes the Secretary of Highways to locate future highways and establish the width thereof, and provides that owners of property may not recover damages for buildings and improvements constructed after such location and establishment.

An instance of the location of a future highway under the terms of the law of 1925 is that of a new section of the Lincoln Highway from Philadelphia east to the New Jersey line. This route is known as Legislative Route 281, Parallel, Bucks County.

Under the ultimate right-of-way act, plans for 1000 miles of highway widening have been filed in Pennsylvania. These plans must be recorded in the county office of the county affected. The policy of the Highway Department has been to emphasize establishment of widening lines in rapidly developing sections where property values seemed likely to increase.

Widening lines have been established on the Lincoln Highway, for example, to provide for an ultimate width of 120 feet between Philadelphia and Paoli, and of 100 feet for the fifty-mile stretch from the York-Lancaster County line westward to the Adams-Franklin County line. Along the Benjamin Franklin Highway, building lines are drawn to make possible an ultimate width of 120 feet from Norristown to Collegeville, of 100 feet from Collegeville to Pottstown, and of 120 feet from Pottstown to Reading.

An act of 1931 amended the ultimate right-of-way law by providing that no person shall be entitled for a period of two years from the approval of the act to recover damages for the establishment of ultimate right-of-way widths.[1] It was felt that this provision was not clear and that its application might possibly defeat the main purpose of the act. Therefore, and also since most of the important urban highway sections were already covered, very few widening lines have been established since 1931.

Procedure in Other States. Kentucky, Maryland, and New Jersey have adopted planning enabling acts modeled upon the alternative police power provisions of the Standard Planning Act for the protection of

[1] Pa. Laws 1931, No. 353, § 8.

mapped streets.[1] New York, having passed similar legislation prior to the publication of the Standard Act, is the only state in which such legislation has been in operation for a sufficiently long time to have given rise to much experience. The New Jersey and Kentucky acts were passed in 1930, but New Jersey communities are just beginning to use their enabling act, and Louisville is the only city to which the Kentucky law of 1930 is applicable. Virginia gave the City of Alexandria a new charter which permitted it to provide for a planning commission and to define its powers.[2] Under this charter the city passed an ordinance closely modeled upon the Standard Planning Act and providing for the protection of reservations for future streets under the police power. Alexandria has probably as complete planning powers as any city in the United States, but since its charter was granted only in 1932, it has not yet had sufficient experience with its new ordinance to be valuable to this study.

California's planning enabling act of 1929 includes a modified eminent domain provision for protection of mapped streets,[3] but this has been used by only a few California municipalities, and the ones attempting to use it have been discouraged by the possibility of damage claims.

Aside from those using subdivision control or the Pennsylvania procedure, the only municipalities and counties discovered by this survey to be protecting their future street locations under the police power are:

Cities and Towns

Delaware	Wilmington	— procedure similar to that of Philadelphia.
Iowa	Des Moines	— by persuasion.
Kentucky	Louisville	— permits refused for buildings in the bed of mapped streets.
Maryland	Baltimore	— ordinance, based on Standard Planning Act, drawn up but not adopted at the time of this report.
Michigan	Detroit	— by persuasion.
Minnesota	St. Paul	— by persuasion.
New York	Rochester	— permits refused for buildings in bed of mapped streets.
	Schenectady	— permits refused for buildings in bed of mapped streets.

[1] See Table I, p. 13, for citations. [2] Va. Acts 1932, c. 280.
[3] Laws 1929, c. 838, § 14. See Appendix, pp. 189–190.

Oklahoma	Oklahoma City	— by persuasion. Same situation as Dallas with regard to comprehensive plan. (See below.)
Texas	Dallas	— by persuasion. City has no real comprehensive plan, although the planning commission has adequate data on hand on which to base such a plan and has made a beginning on a major street plan.
	Fort Worth	— by persuasion.
Virginia	Alexandria	— situation discussed on page 81.
	Norfolk	— no permit issued until building lines have been established.

Counties and Regional Authorities

California	Los Angeles County — by persuasion.
	San Mateo, Santa Clara, and Kern counties — by official map procedure tied to the county zoning ordinances.
	Santa Barbara County — by persuasion.
Wisconsin	Milwaukee County — by subdivision control and by persuasion.

Wilmington's procedure is almost precisely the same as that of Pennsylvania cities. Under the act creating a Street and Sewer Department in Wilmington,[1] the Department was given authority to retain, establish, open, widen, vacate, change the course of, extend or pave streets within the city limits. The Department has the same absolute authority over the street layout within the city boundaries and for one-half mile outside as is possessed by the Board of Surveyors of the City of Philadelphia.[2] Proposed new streets within the city are placed upon the official map by resolution. When a street has been so placed on the official map, it is unlawful to erect any building within the lines of such street, and buildings which may be so erected are not considered subject to damages when land for the street is finally condemned by the city. Property lines must be marked by the Street and Sewer Department prior to the erection of any buildings along new streets, and this has served as a check

[1] Del. Laws 1887, c. 188.
[2] See pp. 73–78.

upon the illegal use of mapped street locations. Results are reported as excellent.

Rochester and Schenectady, N.Y., and Louisville, Ky., refuse permits to build in the beds of streets shown on the official map. Enforcement of the official map is in the hands of the building inspector, and, in case of protest from builders, provision is made for hearing by the board of appeals.[1]

In those cities which are proceeding "by persuasion," the result depends, of course, on the existence of all, or at least a majority of, the following conditions:

(1) Particularly intelligent administration.

(2) A comprehensive city plan or, the seldom found substitute, a planning administrator endowed with more than human intelligence and foresight.

(3) Public understanding and coöperation, or, at least, public nonresistance.

Los Angeles County undertakes to protect the beds of mapped streets chiefly through persuasion and the building up of policy and a body of precedent. The County Planning Commission has prepared a regional plan of highways, and this is referred to when applications for building permits are received. Whenever an application for a building permit indicates that the owner proposes to erect a structure within the lines of a proposed highway or proposed highway widening, on streets where building lines have not been officially established, "every possible persuasive device" is used to prevent its construction. This procedure has been in operation for ten years, and it is reported by Mr. Bryant Hall, Research Engineer of the Commission, that "very good results have been obtained without the use of arbitrary powers."

Santa Clara County already does, and Kern and San Mateo counties are preparing to, protect their future highway locations. The procedure is the same as that used in establishing future widening lines and is described in detail on pages 57–59.

The Des Moines City Council has adopted a master plan by resolution but does not feel that it has authority under the present Iowa laws to withhold building permits for buildings proposed to be erected in its future street locations. However, the fact that such buildings will lie within the lines of a proposed street is pointed out to prospective builders, and, if they insist on a building permit, attempt is made to persuade them

[1] For further discussion of building line procedures in Rochester and Schenectady, see pp. 64–66.

to erect only temporary structures which can be removed without great damage cost. Portions of Keosauqua Way, a new diagonal street mapped across platted territory, have been preserved by this method.

Detroit, St. Paul, Fort Worth, Oklahoma City, and Dallas are following much the same procedure as Los Angeles County and Des Moines.

PROTECTION OF STREET RESERVATIONS THROUGH SUBDIVISION CONTROL

As emphasized throughout this report, subdivision control offers one very effective means of protecting future street widenings and of preventing encroachments upon future streets. Many of the communities studied which, either because of inadequate enabling legislation or lack of understanding on the part of the public or of their administrative bodies, have not been able to make progress in the establishment of building lines or in the protection of their future street lines in their built-up sections, have been able to accomplish much of both in undeveloped areas, through control of subdivision development.

Well-developed platting control machinery and procedure generally follow so closely the provisions of the Standard Planning Act (Title II) that an outline of these provisions, as follows, will serve to illustrate typical procedure.

(1) A major street plan is adopted by the planning commission and filed in the office of the county recorder, after which no plat of a subdivision of land in the territory over which the planning commission exercises jurisdiction may be filed or recorded without the approval of the planning commission.

(2) Rules and regulations are then drawn up by the planning commission to govern the approval of subdivision plats. Such rules must be published and, before adoption, a public hearing held on them. When adopted, a copy of them is certified by the commission to the county recorder. The subjects of such rules and regulations are:

a. Proper arrangement of streets in relation to master plan.

b. Lot sizes, adequate provision for traffic and recreation, avoidance of congestion, etc.

c. Street widths and grades, drainage, water and sewer lines, etc.

(3) The planning commission must approve or disapprove all plats submitted within 30 days. Failure to take such action constitutes approval by the commission. In case of disapproval the reasons therefor shall be stated in writing upon the records of the planning commission. No plat shall be acted on by the planning commission without a hearing,

notice of which is to be furnished to the applicant for approval of plat and to adjoining property owners. Approved plats are considered an amendment of, or addition to, the municipal plan and become a part thereof. Approval of a plat does not constitute acceptance by the public of any street or other open space shown upon the plat. Zoning requirements or restrictions existing in the areas to be subdivided shall be observed by plat owners.

(4) Selling property by reference to an unapproved plat is prohibited and penalized.

(5) The recording or filing of an unapproved plat constitutes a misdemeanor upon the part of the recording official.

(6) The municipality shall not make any improvements, including the laying of utilities, in streets lying in territory for which the planning commission has made a major street plan, unless such street shall have been accepted or opened before the adoption of such plan, or unless such street corresponds with a street shown on the official master plan or with a street on a subdivision plat approved by the planning commission. Council may, however, accept any street not fulfilling the above requirements provided that the ordinance accepting such street be approved by the planning commission or, if disapproved, be passed by not less than a two-thirds vote of council.

(7) Building permits shall not be issued for buildings to be erected except on streets which have been approved by the planning commission.

Since, as suggested above, procedure is very much the same in all the cities studied and the differences are rather in extent and kind of control and administration, it has seemed sufficient to present the results of the study in the following tables indicating various requirements and extent of control exercised.

Municipalities Proceeding under Eminent Domain

At the risk of becoming tiresome it should be repeated once more that the experience of cities reported here under eminent domain, as under the police power, is not exhaustive. At the start of this study, an attempt was made to locate those municipalities doing most effective work, and the list was continually augmented during the course of the study, but even so it is entirely probable that many municipalities whose experience would be valuable have been overlooked. Further, in states such as Massachusetts where eminent domain procedure has been fairly well

TABLE V

THE USE OF SUBDIVISION CONTROL FOR THE PROTECTION OF STREET RESERVATIONS

NOTE. Cities working under legislation passed in 1932 or 1933 are not included here.

MUNICIPALITY OR COUNTY	PLAN TO WHICH PLATTED STREETS CONFORM	ADMINISTRATIVE AUTHORITY	EXTENT OF CONTROL OUTSIDE CORPORATE LIMITS	AMOUNT OF STREET DEDICATION IN CONFORMITY WITH PLAN [1]	DEGREE OF CONTROL AUTHORIZED BY LEGISLATION
ARKANSAS					
Little Rock		City plan commission	5 mi.		Full
CALIFORNIA					
Berkeley	Comprehensive plan	City plan commission	3 mi.		Full
Los Angeles (City)	Comprehensive plan	City plan commission	3 mi.	200 mi. of 100–ft. streets; 100 mi. of 80-ft. streets	Full
Los Angeles County	Regional highway plan	County plan commission		85 mi.	Full
San Diego	Master plan	City plan commission			Full
Santa Barbara (City)	Master plan	City plan commission			Full
Santa Barbara County	Master plan	County plan commission			Full
Santa Clara County	Master plan	County plan commission			
COLORADO					
Denver	Major street plan		5 mi.		
CONNECTICUT					
Hartford		Board of street commissioners	Metropolitan area		
New Haven		Building line commission and aldermen	None		Partial
DELAWARE					
Wilmington		Street department	1½ mi.		Full
ILLINOIS					
Peoria	Major street plan	City plan commission	None		Partial
INDIANA					
Evansville	Master plan	City plan commission	5 mi.	5 mi.	Partial
Indianapolis	Master plan	City plan commission	5 mi.	Dedication to full width of proposed streets	Full
IOWA					
Des Moines	Master plan	City plan commission	1 mi.		Full
KANSAS					
Wichita	Master plan	City plan commission	Contiguous territory		
KENTUCKY					
Lexington	Master plan	City plan commission		40 mi.	Full
Louisville	Master plan	City plan commission	5 mi.		Full
MARYLAND					
Maryland-National Capital Park and Planning Commission	Regional plan	The commission			Full
MASSACHUSETTS					
Boston		Street laying-out department	None		Inadequate
Brookline		Board of survey	None		Inadequate
Newton		Zoning commission	None		
Springfield		Board of survey	None		Partial
Worcester		Board of survey	None		Partial
MICHIGAN					
Detroit	Master plan	City plan commission	3 mi. (coöperates with county)	500 mi.	Partial
Flint	Master plan	City plan commission			Partial
Saginaw	Master plan	City plan commission			Partial

[1] Lack of figures does not indicate that mileage has not been dedicated in conformity to plan but merely that figures have not been compiled.

TABLE V — *Continued*

Municipality or County	Plan to Which Platted Streets Conform	Administrative Authority	Extent of Control outside Corporate Limits	Amount of Street Dedication in Conformity with Plan[1]	Degree of Control Authorized by Legislation
Minnesota					
Minneapolis	Master plan	City plan commission	None		Partial
St. Paul and Ramsey County	Master plan	County plan commission	Entire county area		Full
New York					
Rochester and Monroe County	Master plan and Official map Master plan (not complete)	City plan commission County plan commission			Full, but little activity in city or county since control established
Schenectady	Official map	City plan commission	Unofficial outside but effective		Full
White Plains	Major street plan	City plan commission	None		Full
North Carolina					
Raleigh		City plan commission	1 mi.		
Ohio					
Akron	Master plan	City plan commission	3 mi.		Full
Cincinnati	Official plan	City plan commission	3 mi.		Full
Cleveland	Master plan	City plan commission	3 mi.		Full
Dayton		City plan commission	3 mi.		Full
Oklahoma					
Oklahoma City	Major street plan	Regional plan and city plan commission	3 mi.		Full
Ponca City	Major street plan	City plan commission	3 mi.		Full
Tulsa	Major street plan	City plan commission	3 mi.		Full
Oregon					
Portland	General plan	City plan commission	6 mi. partially		
Pennsylvania					
Abington Township	Street plan	Township commission			Full
Altoona	General plan	City plan commission	3 mi.		Full
Cheltenham Township	Street plan	Township commission			Full
Harrisburg	Major street plan	City plan commission	3 mi.		Full
Philadelphia	Street plan	Board of survey			Full
Upper Darby Township	Street plan	Township commission			Full
Tennessee					
Memphis	Major street plan	City plan commission	5 mi.		Full
Texas					
Dallas	General city plan	City plan commission	5 mi.		Full
Fort Worth	Major street plan		5 mi.		Full
San Antonio	Major street plan		5 mi.	3½ mi.	Full
Virginia					
Norfolk	Master plan	City plan commission	10 mi.		
Richmond	General street plan	Director of public works	5 mi.		
Wisconsin					
Kenosha	Major street plan	City planning commission	3 mi.	2 mi.	Partial
Madison	Master plan	City planning commission			Partial
Milwaukee and Milwaukee County	Highway plan	Board of land commissioners and county regional plan department		60 mi.	Partial

[1] Lack of figures does not indicate that mileage has not been dedicated in conformity to plan but merely that figures have not been compiled.

standardized and in operation for many years, study has been limited to a few selected typical cities.

ARKANSAS

The Arkansas planning enabling act [1] for cities of the first and second class follows the Standard Planning Act in using eminent domain procedure for protection of the official map. No city has used this clause, but, at the time of writing, Little Rock had prepared an ordinance under the act and was anticipating its adoption.

CALIFORNIA

None of the California cities have used the modified eminent domain clause of the California planning enabling act,[2] so far as could be ascertained. All California procedure is still under the police power, depending largely upon the police power clause of the State Constitution reproduced on page 187 of the Appendix.

COLORADO

The Colorado planning enabling act of 1929 [3] contains provisions for the establishment of building lines and the protection of the bed of mapped streets under eminent domain that are identical with those of the Standard Planning Act. No Colorado city has as yet taken advantage of the powers provided in the act.

CONNECTICUT

For provisions of the general law applying to towns, see page 192 of the Appendix. The cities of the state have special charters applying only to themselves and far too numerous to be given here in full. Typical provisions from the city charter of Hartford are given in the Appendix, page 193.

Hartford. The history of building lines in Hartford goes back to 1800. Apparently the lines were originally established for the same purpose for which front yard lines under zoning are now most commonly used, that is, in general, to keep houses on residential streets back to a minimum distance from the street and in line, and to maintain open space along the street. Building lines are not established strictly in accordance with the city plan. They are administered by a Board of Street Commission-

[1] Acts 1929, No. 108.
[2] Laws 1929, c. 838, § 14. See Appendix, p. 189.
[3] Laws 1929, c. 67.

ers, which has no legal discretionary powers. The lines are established for a particular location as a part of the establishment of the street. Damages usually are deemed to be equaled by benefits, and only a nominal cash award is made.

Since most of the building lines are established during the early stages of street development and before building operations have gone very far, expenses of street widening have not been greatly complicated by the necessity of removing costly buildings, for which damages would presumably have been held to exceed benefits.

Procedure normally consists of the following steps:

(1) Initiation by petition or by common council.

(2) Hearing held on petition when this is deemed necessary or desirable.

(3) Surveys made and legal description written and published.

(4) Hearing on published description.

(5) Assessment, after hearings, with award of damages and benefits. Opportunity is provided to appeal awards.

(6) Passage of resolution by city council and approval by mayor.

Building lines are not required to be shown on plat maps although they are sometimes indicated on development plans or stipulated in deeds at the option of the real estate promoter. However, upon acceptance of any street in a new subdivision, building lines are established thereon by custom and incidental to acceptance.

Usual practice is to establish building lines continuously and for the same distance from the center of the street on both sides of the street for one or more city blocks. In the case of corner lots, building line depths are frequently decreased to avoid excessive damages.

Building lines have been established on about 90 per cent of the streets of the city and are maintained through organized field inspection of all building operations. The Board of Street Commissioners has its own inspector for this purpose, and there is further coöperation between the Board and the office of the city building inspector.

Building lines are shown on sectional maps of the city at a scale of 50 feet to the inch. These maps are kept up to date for changes in property lines and names of owners by means of a systematic card file of property exchanges. The whole administrative machinery and procedure in Hartford are unusually efficient.

The case of Albany Avenue may serve as an example. Here building lines were established in 1871 and have been upheld by the courts. The

original width of the street was 75 feet, with building lines set from 15 to 33 feet back on each side. This street was later widened 14½ feet on each side, making the final width of street 104 feet. At the time of widening, building lines were made identical with the new street lines. Damages for taking the land were almost balanced by benefits assessed for moving building lines out to street lines, and cash awards were relatively small. The following figures show benefits, damages, and cash awards:

Total damages for taking land	$68,710.91
Total benefits assessed	61,721.96
Balance paid to property owners	6,988.95

There were sixteen appeals from the findings and a consequent total increase of about $6000 in awards to property owners by the courts. The character of the street has shifted very largely from residence to business. New building lines, with further widening in view, have now been established along the street by the city for a distance of about a mile.

New Haven. Building lines have been established under eminent domain over a period of many years and cover approximately 190 miles out of a total street mileage of 214. Streets in the oldest section of the city are generally without them.

New Haven has a Special Commission on Building Lines established under a law passed in 1911,[1] whose provisions may be summarized as follows:

(1) An unsalaried commission of five members is appointed by the mayor.

(2) The commission has authority to establish, modify, or reëstablish building lines and to fix damages and assess benefits therefor upon any street, upon its own initiative or upon request of the Board of Aldermen.

(3) Notice must be given all owners and mortgagees affected, and a public hearing must be held in all cases of establishment, modification, or reëstablishment of building lines or assessment of damages or benefits.

(4) Compensation to owners of property affected is to be the excess of damages over benefits, where such excess occurs.

(5) Any person aggrieved by award may appeal to court within 30 days, by written application for relief.

(6) The commission reports in writing to the mayor upon any proposed changes in building lines and upon consequent damage and benefit

[1] Conn. Sp. Laws 1911, pp. 480–482.

Photographs by courtesy of Roscoe N. Clark

BUSINESS BUILDINGS IN HARTFORD, CONNECTICUT, HELD BACK BY LINES ORIGINALLY ESTABLISHED TO PRESERVE RESIDENTIAL FRONT YARDS

PLATE IV.

assessments. The mayor may approve or reject such report. If he disapproves he must return it within ten days with his reasons, for further consideration by the commission. When the report is approved, it shall be recorded on city records and land records, and after damages are paid, the easement is deemed established for public use.

(7) Nothing in the act shall prevent the Board of Aldermen from establishing building lines in new streets or in parts of streets widened or extended after passage of the act, in accordance with provisions of the charter of New Haven.

There have been no recent appeals nor damage suits arising from the establishment of building lines.

In undertaking the establishment of building lines, the city is guided largely by the setback of buildings existing at time of establishment, and there is as a result great variation in building line depths, sometimes even within a single block. In order to minimize restrictions on corner lots, the lines are generally set out at corners.

The subdivision control clauses of the city charter require that all plats be approved by the Board of Aldermen, but this rule apparently is not always observed. The city, however, includes little undeveloped land. Building lines are required to be shown on all new plats.

INDIANA

Indianapolis. Under a law of 1923,[1] the Park Board of Indianapolis has established eminent domain lines along city parkways, paying for the easement taken or securing dedication from owners who believe that their property will benefit thereby. Meridian Street is an example of this establishment. On this street, which has a 70-foot right of way, building lines were fixed 75 feet behind the property lines on both sides of the street for a distance of about two miles, with reported damage costs of only about $10,000.

MASSACHUSETTS

Pertinent provisions of the Massachusetts laws are contained in the Appendix, pages 193–195.

As noted in Chapter II, the requirement that all damage claims be made within one year from the date of a line establishment, or else right thereto be forfeited, appears to have a tendency to defeat the best operation of the Massachusetts law, especially in its application to exist-

[1] Acts 1923 (Spec. Session), c. 168.

ing buildings projecting beyond established lines. Whether or not the need for alteration of such buildings is likely to arise ultimately, claims for damages in anticipation of such eventuality are always made at once by the wide-awake owner to avoid forfeiture. This anticipation of remote damages, which in the normal course of events may never occur, undoubtedly adds to the cost of the Massachusetts procedure and contributes to the general reluctance to use the present eminent domain authority.

Boston. This city reports generally unsatisfactory results with the eminent domain law because of its costliness. Repeated experience has been that large damages are awarded as compensation for fixing of lines at the time of establishment, and that these damages are not properly taken into account at the time when land is actually occupied by the city for widening, thus resulting in double payment for the strip. Two cases in point may be summarized as follows:

(1) At 15 Beacon Street damages to the amount of $30,000 were awarded for the establishment of a building line set back 9.75 feet along a 59-foot frontage, although the project appeared to be one of immediate widening rather than one anticipated far in the future. The original width of the street was 43 feet, and the depth of the lot 94.52 feet.

(2) Along North Harvard Street a line was established in 1925 for a widening project carried out in 1931 under which a 2-rod road was widened to 60 feet, with approximately 20 feet taken from one side of the street and 5 feet from the other. $2500 was awarded as damages to property, 80 feet in depth, situated on the side from which 20 feet were taken.

Other experiences with street widening projects in Boston include the 10-foot widening of Chauncy Street along one side which was started in 1873 and which has progressed piecemeal through acquisition, lot by lot, as new building permits are requested. Over a period of 52 years about 400 feet of widening were accomplished. The widening of Harrison Avenue by the same piecemeal procedure was also started in 1873 and is still in process, with about 1000 feet of widening accomplished. The 10-foot added width is supplied by the yards preserved by previous private contract restrictions which are now lapsing. In West Roxbury, a suburb, Beach Street has been widened for a distance of approximately one-quarter mile from 2 rods to 60 feet, widening having been carried out six years after the establishment of building lines; Grove Street was likewise widened over a period of six years from 2 rods to 60 feet.

The city has also established building lines or front yard lines on various streets, primarily for the purpose of preserving residential values and maintaining stable neighborhood conditions. In 1894, 20-foot building lines were established, at no cost to the city, for about a mile along both sides of Beacon Street upon petition of property owners to supplant lapsing private contract restrictions. Under similar conditions, 20-foot lines have been established on the same street between Arundel Street and the city line. Boylston Street from the Back Bay Fens to Brookline Avenue has 15-foot lines on each side at no cost to the city. There are about six other front yard line establishments in the city, with usual setback about 21 feet.

Incidental procedure in establishing building lines fixes one year as the limit of time for making entry of suit for damages for building line establishment.

Under a statute of 1896 the Park Commissioners were authorized to establish a building line not over 25 feet away from the exterior line of any parkway, thus creating a strip within which no building was allowed and abutting which no building might exceed 70 feet in height. Damages were allowed. A 20-foot line was established in accordance with this law on Commonwealth Avenue, but no claims for damages were instituted within the time limit for such claims.

Brookline. Building lines were first established in Brookline about 1897 under the Massachusetts eminent domain law. Later, for some years it was required that all streets presented to the town for acceptance must have provision for the establishment of building lines also. Since the zoning ordinance was passed in 1924, very few building lines have been established under the Building Line Statute although the zoning setbacks are not considered to be primarily for purposes of street widening. As a matter of fact, considerable work was done under the Building Line Statute; building lines were established on 56 streets in some part of their length between 1897 and 1928 according to its provisions. Although working under an eminent domain statute, Brookline has been saved the payment of damages in several instances by a common agreement that no damages would be asked in the case of building lines established along certain streets. Before the building lines were established, the property owners along the street in question were asked to sign waivers of damages, which most of them did, and lines were established on both sides of about 14 miles of streets. Claims of the few who refused to sign waivers were adjusted without suits going to trial, and the total

cost of the land affected by building lines averaged less than one cent per square foot.

Springfield. Building lines for street widening have been established on two major streets and for short distances on a few other streets under eminent domain.

In the case of one of the major streets, a 16½-foot setback was established on one side of the street for a distance of approximately 1½ miles by act of city council in 1916 to protect ultimate widening. All owners signed releases in the matter of damages for the line, and no cash awards were made. In 1927, upon petition, the building line was modified to permit bay windows and porches to extend. In 1931, a petition was presented by a group of owners to have the building line removed, but this was opposed by another group threatening damage claims if the line were changed or removed. No action was taken. The street has not yet been widened.

In the second case, a line was established in 1926 by act of council unequally on both sides of the street to provide for increasing its width from 49½ to 66 feet. Owners made immediate claim and entry of suit, because their right to do so is forfeited if entry is not made within one year of the date of establishment of the line, and the result is that there are now about a dozen damage suits pending. The owner of a four-story brick apartment house, for example, claims damage because of the limitation of his rights in case of fire or other damage to the building, for the law provides that portions of buildings in front of such a line cannot be materially altered or rebuilt in case of destruction. The building covers almost its entire lot, which is 150 feet deep, and the line passes through the front of the building, affecting eight apartments.

Winchester. Following very much the same procedure as Brookline, Winchester had by 1926 secured building lines on both sides of 15 miles of streets.

A report of Winchester's procedure by Mr. James Hinds,[1] Town Engineer, may be summarized as follows.

The town is almost exclusively residential. At the time of writing, the town was zoned, but the zoning ordinance did not specify setbacks. Building lines were established under a separate procedure.

Individuals who signed waivers of damage were told that if the town should take any or all of the restricted areas, it would pay for the land

[1] In *The American City*, Dec. 1926, p. 835.

taken. In ten years, only two claims totaling $8000 were made for damages. On several streets of a mile or more in length, releases were secured on as much as 95 per cent of the total frontage.

No private ways were accepted as public ways without the establishment of building lines.

Restrictions varied from 5 to 40 feet and were decided for each street separately after study. Hearings were held, and the lines were adopted for each street by the Town Meeting.

An analysis of Winchester's procedure and that of Brookline would indicate that the first building lines were established as substantially nothing more than front yard lines and that they corresponded to zoning front yard provisions as later used. That the method was cumbersome as compared with police power methods, whether under zoning or under official map laws, is undoubtedly true. Further, it is obvious that the success of the method depended very largely upon citizen understanding and coöperation.

MINNESOTA

The eminent domain act of Minnesota [1] gives to the city council or to the board of park commissioners of any municipality power to establish building lines and acquire building line easements along any street or park or parkway. Building line easements may extend to a depth of 50 feet but may not affect any portion of a private dwelling existing at the time of passage of the law. Buildings or parts of buildings existing within the area of the proposed easement may be exempted from the effect of the building line easement for a stated time or for the duration of the life of the building.

Easements may be acquired by purchase, grant, condemnation, or dedication in plats. If condemnation is used, the law provides for the usual jury of appraisal to assess damages and benefits, as well as for hearings, notices, and review by council and by the courts.

As with most of the early building line laws, the purpose of the Minnesota act was the improvement of residential districts by creating regular and uniform front yards, but it had only a limited use for this purpose, which is now served by the zoning ordinance.

Minneapolis. The Minneapolis procedure has been exceptionally successful and for that reason is described here in considerable detail. Its most significant features may be outlined as follows:

[1] Laws 1903, c. 194, as amended by Laws 1919, c. 504, and Laws 1923, c. 193.

(1) Establishment of building lines is initiated by city council on its own action or as the result of recommendations or petition presented.

(2) Lines may be established along any street or portion of street and at any depth not to exceed 50 feet.

(3) Council may provide in the resolution designating such easement that buildings or structures, or parts thereof, existing within the boundaries of the easement may remain for a specific period of time or during the life of such structures, but that no alterations will be permitted, and that after the removal of such existing structures no other buildings or structures shall be erected.

(4) Appraisal commissioners are appointed to view the easement and appraise damages, award benefits, and hold hearings. Benefit assessments may not exceed cost of damages plus costs of proceedings in appraisal and award.

(5) A written report of action and schedule of damages and benefits are filed with the city clerk and include description of lands, names of the owners, and statement of costs of proceeding.

(6) After completion of condemnation proceedings, council is required to cause a plat of the improvement to be made, which shall be a copy of the original plat on file with a list of the parcels taken and amount paid. Such plat must be filed with president of the governing body and clerk or secretary of each of the following offices: city engineer, city clerk, park board, or register of deeds.

(7) Upon confirmation of assessments, a copy is sent to the county auditor of the county in which the lands are located for inclusion in the next general tax list. Assessments are collected along with the general taxes, but a separate account of them is kept in the books.

Projects for street improvements which were pending when the planning commission was appointed were studied by the commission, and a general major street plan was prepared in 1925 and has since been continuously studied and adapted, changed and improved.

> [Studies by the commission] have shown that along several of the principal traffic arteries radiating from the center of the city, the use of private property is in a transitional state from its primary use as single residence property to present uses of apartment, commercial, or industrial property. Taking advantage of these changing conditions, an attempt has been made to establish new street lines, set back within the existing street lines, to provide for the future widening of the street and street roadways, and for the protection of private

property development, guarding against the future disruption of private property improvements, establishing known conditions, governing the improvement of private property, eliminating the uncertainty which would otherwise exist, promoting the economy of future street improvements, and protecting the general city interest as well as the interest of the private owner.[1]

In 1924 a study of the Minneapolis plan showed the following facts with regard to new streets, street widening, and so forth:

New streets to be opened	9.6 miles
Major streets to be widened	110.1 miles
Outlying commercial streets to be protected pending future widening	42.0 miles
Streets adjacent to congested zone to be widened	28.0 miles

Since 1924 about 40 miles of building lines have been established under the Minneapolis procedure and in accordance with the widenings proposed on the major street plan.

The city planning commission is now asking for amendments to make the eminent domain act more useful. One of the principal drawbacks has been the necessity of dual procedure, — the acquisition of easement by purchase, and the acquisition of fee in land at the time of actual widening. In practice, however, cost of easement has not appeared to be great in proportion to damage costs saved thereby.

In some instances awards of damages or costs of easement have been delayed or postponed indefinitely by "suspended procedure." That is, the first resolution establishing the easement has been adopted, but the final resolution has been postponed for as long as ten years. During this period of suspended proceedings no award can be made for easement, and, on the other hand, no building permit may be issued for a building to be set beyond the projected building line.

MISSOURI

St. Louis. Under an eminent domain act applying only to the city of St. Louis,[2] building lines may be established by city council by ordinance specifying the period, not to exceed 25 years, within which all buildings shall be carried back to the building line. At the end of the period the city shall determine by condemnation proceedings the amount

[1] From a General Report on a Study of the Building Line Easement Law by Herman E. Olson, Engineer of Planning Commission, May 6, 1932.

[2] Mo. Laws 1921, pp. 510–511.

to be paid to the property owner by reason of the establishment of the building line.

Nothing has been done under this law, as there seemed to be no great advantage to be gained under it. The city's widening has been accomplished through outright taking of the land.

NEW JERSEY

Newark. Procedure in Newark is under a state law applying to all municipalities,[1] and requiring that a resolution establishing the building line shall be followed by an ordinance making appropriation for damages. Newark, however, has customarily followed the "suspended procedure" described for Minneapolis. Building lines have been established on all streets in Newark since the beginning of the city's history.

VIRGINIA

Norfolk. Under its charter Norfolk may establish building lines for street widening purposes for the whole or part of a street but not for less than one block or the distance between two cross streets. Before such lines are established, council must publish for at least ten days in some paper of general circulation a notice to the owners of the property affected of the proposed establishment of such building lines, naming a day and place for a hearing thereon. After the hearing council may establish such lines by ordinance, copy of which shall be filed by the city clerk and indexed in the name of the street along which such lines are fixed. Thereafter no permits may be granted for the construction of any building lying within the easement.

If any person objects, the lines shall become null and void against the land owned by such objector unless the city (*a*) shall purchase or institute condemnation proceedings for such buildings within 60 days after the passage of the ordinance, or (*b*) shall purchase any property from which buildings have been removed within 60 days after notice of such removal, or institute condemnation proceedings for such property.

Norfolk has had considerable success with this method and in many instances has been able to persuade property owners to give the land between the lines to the city, or to trade the setback for a good sidewalk. Monticello Avenue has had 10-foot building lines established on slightly less than one mile of frontage on both sides of the street. A total frontage

[1] Laws 1917, c. 215, as amended by Laws 1920, c. 137, and Laws 1922, c. 238. See Appendix, p. 195.

of 4245 feet was given without cost; the city purchased 1195 feet for $24,310; 2770 feet are still occupied by buildings.

THE DISTRICT OF COLUMBIA

Streets in the District of Columbia to be considered in connection with this research are of three kinds as respects their administration and planning control. These are:

(1) Streets in the original city of Washington, almost all of which are owned in fee by the United States, having been conveyed to the government by the original proprietors in 1792.

(2) Streets in the old city of Georgetown and a few areas in the former County of Washington developed prior to 1893, of which the status depends on various miscellaneous laws.

(3) Streets in all the remaining portions of the District of Columbia are mapped prior to acquisition in accordance with the Permanent System of Highways Plan which is administered jointly by the District Commissioners.

While streets in the first and second groups are exempt from the general laws governing the highway plan, minor streets throughout the District come under the laws of 1905 as amended.[1] The Street Readjustment Act of 1932, providing a procedure for the closing of streets and alleys, likewise applies to all parts of the District of Columbia.

Between 1893 and 1898, the Congress enacted the basic legislation establishing the Permanent System of Highways Plan,[2] and providing that all subdivisions thereafter recorded must conform to the plan, which was made to follow as nearly as practicable the plan of the original city. Among subsequent amendments was a provision permitting changes in the plan whenever required to meet new conditions, to provide for institutional development, or to conform to topographical or other situations in the public interest. These changes, which now average about fifteen a year, may involve the location, alignment, or width of streets, and are made by the District Commissioners after public hearings and forwarded to the National Capital Park and Planning Commission for approval. Proposals for street closings are also subject to public hearings and are ordered by the District Commissioners, after recommendation by the National Capital Park and Planning Commission. However, old roads which do not form an integral part of the highway plan can be closed

[1] 33 Stats., 733 (1905).

[2] 27 Stats., 532 (1893), as amended by 30 Stats., 519 (1898) and by later amendments.

by the District Commissioners upon the consent of all the abutting property owners.

Any street on the highway plan may be acquired by eminent domain, but since it is usually in the interest of property owners to dedicate in accordance with the plan, condemnation is resorted to primarily where special conditions exist as in widening along some of the old roads, or where important streets extend through inactive or adversely subdivided property.

Upon decision to open or widen any street on the plan, regular condemnation proceedings are instituted, a jury is appointed to fix damages, assess benefits, and hold hearings. It was formerly required that assessments for benefits must equal the damages and court costs, but in a number of important cases the jury was unable to find sufficient benefits to equal the damages, and the law has now been amended to permit the jury to award such damages and assess such benefits as may seem equitable, any excess of damages over benefits to be paid out of the District revenues. In case, however, the cost to the District seems too great, the Commissioners may in their discretion dismiss the case and stop proceedings.

It is rarely necessary to institute condemnation proceedings for street widenings within the original city of Washington because of the very wide streets now existing. When such widenings are necessary, they have to be authorized by special Act of Congress, and condemnation proceedings are as outlined above.

Streets on the highway plan range from 90 to 160 feet in width between building lines. The customary width is 90 feet, 30 feet of which are devoted to roadway, with 12 feet on either side for tree space and sidewalks; the remaining 18 feet on either side are under the immediate care of the owner of the abutting premises and correspond to an easement within which no buildings or structures may be erected.

Between 1926 and 1932, the National Capital Park and Planning Commission estimates that about 45 miles of new streets were acquired either by dedication or condemnation, including widenings. Dedications are made either independently or in connection with the filing of subdivision plats, which are now accepted by the District Commissioners subject only to the recommendation of the Surveyor of the District of Columbia, in whose office all plats are recorded.

In accepting dedicated streets, the law permits acceptance of a 60-foot dedication with two 15-foot building lines, instead of the full 90-foot

dedication. Ownership of the 15-foot strips remains in the owners of abutting property and is taxed, but its use is restricted against the erection of buildings or structures of any kind, and these areas are subject to a right of way for the District of Columbia to lay thereon sidewalks, sewers, and water mains.

In the original city of Washington the Federal Government owns the entire area in the street from building line to building line; but where the entire width is not used for purposes of roadway, sidewalk, and tree space, the remaining space on each side between the sidewalk and the building line is used and maintained by the owners of the abutting property, but no buildings may be erected on it.

The dedication of minor streets is subject to the approval of the District Commissioners. Although these streets are outside of the scope of the permanent system of highways plan, their alignment and location are studied with a view to good city planning.

Summary of Municipal Experience

Technique of establishing building lines

There is considerable variation in practice among the municipalities studied in determining the extent of setback and actual location of building lines for street widening, whether as an incidental purpose under the police power, or as a principal objective under eminent domain procedure. The following two types predominate:

(1) Lines established along both sides of the street at a uniform distance from the center of the street or from the outside line of the street, and uniform either throughout the length of the street or for considerable portions thereof. The amount of setback depends upon whether the street is a major, secondary, or minor street. This procedure is usually followed under platting regulations, and in the built-up areas of many cities (notably Memphis, Louisville, Akron, Cleveland, Dearborn), on county highways, state highways, and generally by communities working under planning enabling acts.

(2) Building lines not established uniformly, including lines established along one side of the street only, lines established on both sides or one side of the street but upon only a small portion of it or even upon a single block, and, finally, lines without uniform setback, including those placed at the average distance of setback of buildings already erected along a street or within a single block.

TABLE VI

CITIES ESTABLISHING BUILDING LINES FOR STREET WIDENING BY PROCEDURES OTHER THAN ZONING OR SUBDIVISION CONTROL

Municipality or County	State Legislative Authority	Local Legislative Authority	Type of Plan on Which Shown	Provision for Adjustment or Variance	Degree of Success	Police Power or Eminent Domain
California						
Berkeley	Const., Art. XI, Sec. 8.	Charter and ordinances	Street plan	None	Excellent	P. P.
Los Angeles (City)		Ordinances	Major street plan	Unofficial	Excellent	P. P.
Los Angeles County		Ordinances	Regional highway plan	Unofficial	Excellent	P. P.
San Diego		Ordinances	Major street plan		Fair	P. P.
Santa Barbara (City)		Ordinances	Major street plan	None	Excellent	P. P.
Santa Clara County		Ordinances	County highway plan		(New)	P. P.
Connecticut						
Hartford	Charter	Ordinances		Compensation	Excellent	E. D.
New Haven	Charter	Ordinances		Compensation	Fair	E. D.
Delaware						
Wilmington	Special act of 1887	Ordinances		None	Excellent	P. P.
District of Columbia	Acts of Congress	Ordinances	Major highway plan	Compensation	Excellent	E. D.
Illinois						
47 towns	Formerly none; now special building line acts of 1933	Ordinances	Town plans	None	Fair	P. P.
Cook County		Ordinances	County highway plan	None		P. P.
DuPage County		Ordinances	County highway plan	None		P. P.
Indiana						
Indianapolis	Special law for park boards		Parkway plan	Compensation	Fair	E. D.
Kentucky						
Lexington	Unofficial	Ordinances	Major street plan	Unofficial	Excellent	P. P.
Louisville	Planning enabling act	Official map and master plan	Major street plan	Board of appeals	Excellent	P. P.
Louisiana						
New Orleans	Special building line act	Ordinance		Compensation	None	E. D.
Massachusetts						
Boston	Board of survey acts	Ordinances	Major street plan	Compensation	Moderate	E. D.
Brookline	Board of survey acts and Town planning laws	Ordinances		Compensation	Fair	E. D.
Lexington		Ordinances		Compensation	Fair	E. D.
Springfield		Ordinances		Compensation	Fair	E. D.
Winchester		Ordinances		Compensation	Fair	E. D.
Worcester		Ordinances		Compensation	Fair	E. D.
Michigan						
Detroit	Charter	Ordinances	Major street plan	Unofficial	Partial	P. P.
Flint	"General police power"	Ordinances	Comprehensive plan	Board of appeals	Excellent	P. P.
Minnesota						
Minneapolis	Special building line law	Ordinances	Street plan	Compensation	Excellent	E. D.
New Jersey						
Newark	Building line law	Ordinances		Compensation	Excellent	E. D.
New York						
Rochester	Planning enabling act	Official map	Master plan	Board of appeals	(New)	P. P.
Schenectady		Official map	Master plan	Board of appeals	(New)	P. P.
White Plains			Master plan	Board of appeals	Moderate	P. P.
Oklahoma						
Oklahoma City	Unofficial	Unofficial	Street plan	Unofficial	Fair	P. P.
Tennessee						
Memphis	Unofficial	Unofficial	Master plan	Board of appeals	Excellent	P. P.
Texas						
Fort Worth	Charter	Ordinances	Major street plan	Unofficial	Excellent	P. P.
Virginia						
Norfolk	Charter	Ordinances	Major street plan	Compensation	Moderate	E. D.
Wisconsin						
Milwaukee County	Regional plan law	Ordinances	Regional highway plan	Unofficial	Excellent	P. P.

Instances of such lack of uniformity are to be found particularly among communities working under eminent domain, those working under the police power but not proceeding in accordance with a general plan, or those whose procedure is dictated very largely by political expediency or the necessity of ironing out peculiarities already existing in the street system. There are sections, particularly in the older cities, where street encroachments have been so long tolerated that the city has almost lost sight of the original street lines, or where narrow, curving streets exist and blocks are so thoroughly built up with buildings of a fairly permanent character that it would be almost useless to establish uniform building lines. In other cities there are many streets which are so jagged or lacking in uniformity because of early bad subdivision design that here, too, there is no argument for uniformity in the establishment of building lines.

It would seem that municipalities faced to a greater or less extent with situations requiring non-uniform building lines should devote considerable thought to questions of equity in establishing them. Lines should not be established without careful study of all the ownerships involved, and if such study makes it apparent that real damage will be done which cannot be satisfactorily handled by a board of appeals through the granting of variance, then the municipality should certainly institute eminent domain procedure.

There is further variation in what might be termed the tools of administration. Some of the communities studied have excellent maps, simple and effective forms for permits and applications for plat approval, good filing systems, and have developed excellent coöperation among the various departments charged with administering the building line work. Other communities have poor or indifferent maps, fair to poor coöperation with other administrative departments, and depend for their success upon the continuing good judgment and ingenuity of the planning engineer. In some instances the latter has been almost sufficient, but it puts an unfair burden of responsibility upon the engineer and cannot be recommended as a satisfactory municipal policy.

PROVISIONS FOR DAMAGE OR HARDSHIP

Corner Lots. A frequent practice in Hartford, Conn., has been to vary building lines to avoid excessive damages. This is also practiced in New Haven.

The Milford, Conn., zoning ordinance adopted in 1930 provides that:

> A building erected on a corner lot [in residence districts] shall be required to comply with the setback line on only its narrow street front. In cases where the two street frontages of a corner lot vary in length, the lot shall be deemed to be situated on the street containing the narrower frontage in computing the average setback lines. Where the two street frontages of a corner lot are of the same length, the owner may elect which street is to govern the setback line of the building.[1]

Under the Dearborn, Mich., zoning ordinance, side yards on the street side of corner lots, including half of the side street, must not be less than 40 feet in width except that this provision shall not apply to reduce the buildable width of any existing lot to less than 80 per cent of the lot width nor to less than 20 feet in any case.

The zoning ordinance of Flint, Mich., requires setback of 25 feet in residence districts in addition to building lines established under general ordinance, but regulation shall not be interpreted to reduce building width of a corner lot which faces an intersecting street and which is separate and distinct from adjacent lots and is included in a plat or deed of record at the time of passage of ordinance to less than 24 feet. Many zoning ordinances contain similar provisions, with varying minimum building widths of corner lots.

The Salt Lake City, Utah, zoning ordinance exempts one frontage of corner lots from front yard provisions in residence districts, except that a 10-foot setback must be observed.

In Kenosha, Wis., when an owner comes in good faith with plans to erect a building on a lot where setback is so great as not to permit of reasonable use of lot, the city will either purchase the entire lot or that portion of the lot which lies within the setback line.[2]

Cases Where a Building Would Be Pocketed between Two Other Buildings. Temporary structures projecting beyond the lines are sometimes permitted when a building would otherwise be pocketed between two adjacent buildings, sometimes with accompanying agreement that if and when the city does widen the street, damages will not be asked for removal or changes in the building. When conditions seem to justify doing so, Fort Worth, Tex., makes agreements with property owners that

[1] Many zoning ordinances make special provisions for setbacks on corner lots, whether these setbacks were or were not established for street widening purposes. For further examples, see Arthur C. Comey, *Transition Zoning*, pp. 68–80. (Cambridge, Harvard University Press, 1933. Harvard City Planning Studies, V.)

[2] For further discussion of Kenosha's building line procedure, see pp. 36–40.

if the street is not widened within a fixed period of time the owner will not ask damages, but if the street is widened within such period the owner will be given compensation for buildings.

Under Eminent Domain. Some cities have provisions for limiting the period of time within which buildings must be brought back to the new line. Others have provisions for extending the period of time for payment of assessments for benefit.

Permits for Alterations. Some cities treat permits for alterations precisely like permits for new buildings and use the zoning ordinance definition of what constitutes an alteration. Other cities allow permits for extensive alterations within the setback lines, even when they do not grant permits for new buildings.

In cases where an existing building encroaches on the setback line and the owner wishes to add to the building, Kenosha, Wis., offers the owner a choice as to whether the city shall pay for moving back the building to the setback line or shall cut off the front of the building to the line. The city offers costs plus 15 per cent for inconvenience to the owner. Kenosha permits minor alterations to buildings already extending beyond building lines, but extensive alterations are not permitted.

CHAPTER IV

EMINENT DOMAIN VERSUS THE POLICE POWER

SINCE this report is written neither by nor primarily for members of the legal profession, it may be permissible to start this chapter with a layman's definition of "eminent domain" and of the "police power," as they relate to the subject of this research.

Eminent domain is an expression of the sovereign authority of the state to acquire title to or rights in property needed for public use upon payment of reasonable compensation.

The police power is an expression of the authority of the state and of the community to protect and preserve the general community welfare against abuses or injury arising from the acts of individual citizens, and to do so without compensation for reasonable restrictions placed upon such acts.

Court decisions, legal opinions, and effective law show a constantly shifting marginal line between these two sovereign powers of the state, with a strong tendency, during recent years, toward expansion of the police power and toward proportionately less dependence upon eminent domain for control over the use of private property. The chief controversies in the field are waged on the question of what constitutes "the taking of property without due process of law."

A broadening of the police power consistent with the increasing complexity of present-day society seems not only proper but essential and inevitable. Concomitant with concentration of population is the necessity of increased restriction of the actions of the individual. One of the costs of the social advantages of community living is the surrender of those presumed rights of the individual which may not be freely exercised without endangering the property of others or the common good. With the interests of insurance companies excluded, there is no social reason why a farmer on his hundred-acre farm should not burn his buildings to the ground if he chooses to do so. It becomes a different matter when he moves to a town house surrounded by other houses which would be subjected to fire hazard by such an act. The same farmer might operate a glue factory or a boiler works without causing a nuisance to his neighbors

and without detriment to their property, but the same use of a city lot might not be so harmless. The country man need not be restricted against cutting off access of light to his neighbor's house nor against liberties with pig pens, but cannot be left so free in town on a 50-foot lot. The advantages of community living can be preserved only by restriction of the rights of the individual, and this restriction is accomplished through exercise of the police power. Zoning and its general acceptance are perhaps the best illustrations of the recognition of this necessity and of the expanding use of the police power.

The question with which we are immediately concerned is whether or not, under certain conditions, the community is justified in using the police power to deprive an owner of the right to build upon that portion of his lot ultimately to be needed by the community for purposes of new streets or street widening. Is such a use of the police power implicit in the already established principles of zoning, or does it represent a definite step in expansion? Are adequate street systems and reasonable breadths of street sufficiently vital to the public safety and general welfare to justify the use of the police power to insure their protection and ultimate realization?

The Connecticut Supreme Court answers these questions in part in the following decision: [1]

> Streets properly located and of suitable width help transportation, add to the safety of travel, furnish better protection against fire, and better light and air to those who live upon the streets. They afford better opportunities for laying, maintaining and inspecting water, sewer, gas and heating pipes, and electric and telephone conduits in the streets. They give opportunity for sidewalks of reasonable width and for shade trees along the highway. Streets of reasonable width add to the value of the land along the street, enhance the general value of land and buildings in the neighborhood and greatly increase the beauty of the neighborhood. These are all facts of universal knowledge. . . .
>
> Narrow streets in congested industrial centers breed disease. Too many houses crowded upon a lot without sufficient space for light and air menace health. Such a neighborhood affects the morals of its people. The sordid selfishness which would insist upon making the street a mere alley, upon getting houses upon land without regard to reasonable provision for air and light, must be restrained if the public welfare is to be preserved. The State is vitally interested in the health of its citizens, for upon their strength rests its own well-being. It or its agent, the town, must provide fire and police protection to all

[1] In the case of the Town of Windsor *v.* Whitney, 95 Conn. 357, 111 Atl. 354 (1920).

settled parts. The State and its agent, the town, cannot preserve and protect the rights committed to it if private owners may lay out streets at will and build at will. Uniformity in plan or relation of one street to others will be absent. The practical loss to the community will be large and the loss in neighborhood appearance will be immeasurable.

This Court takes the view that essentially the same objectives and justification underlie the police power protection of street widths as underlie the police power administration of zoning in all its several phases. The Court goes on to say:

Eminent domain takes property because it is useful to the public. The police power regulates the use of property or impairs the rights in property, because the free exercise of these rights is detrimental to public interest. Freund on Police Power, § 511. It is upon this principle that the state has the right to say, if you lay out streets in the development of your land for building purposes you must make them of reasonable width and you must establish reasonable building lines, for thereby will you protect the public health and safety and the public welfare.

. . . . . .

Where the free exercise of one's rights of property is detrimental to the public interest, the State has the right to regulate reasonably such exercise of control under the police power. And that, of course, means, without compensation.

Mr. Harland Bartholomew, while fully convinced of the propriety of using the police power for the protection of street reservations, seems to regard such use as, logically, a further step, when he says:

I believe that we are on the threshold of another great forward step in city planning in this country, such as has been made during the past ten or fifteen years in zoning. This time our accomplishments will be in the field of official city plans and the protection of major street plans by building lines through the use of the police power.[1]

It may be desirable to say again at this point that this study is not concerned with the use of eminent domain to acquire title to property but is concerned only with the exercise of this power to limit the use of land, with taking of titles deferred. Conversely, there is no suggestion here, and no evidence of intention in connection with any procedure observed, of extending the police power beyond the mere protection of street reservations pending later taking of the land through eminent domain.

[1] In a letter to the author dated May 15, 1933.

Such definition of so obvious a field of intent would seem scarcely necessary, and yet in the course of making this study we have frequently run across clear cases of misunderstanding giving rise to long arguments against use of the police power for the protection of street reservations on the grounds that this is "taking of land without due process of law." Evidence of the surprisingly widespread confusion as to the nature of police power building lines appears, for example, in the considered discussion by ten engineers of a paper, "Legal Problems Involved in Establishing Set-back Lines," presented by Mr. Clifton Williams at the meeting of the City Planning Division of the American Society of Civil Engineers, held at Milwaukee, Wis., on July 11, 1929.[1] Six of the ten argue against this use of the police power or doubt the constitutionality of its use for this purpose upon the grounds that it involves "taking of property without compensation."

In the sense of acquiring title, land or property is never taken under the police power through procedures described in this report. In special instances and under certain conditions, however, police power building lines or street reservations may be such as to reduce materially the usefulness and value of individual properties with resulting virtual confiscation of these properties, which, presumably, might in effect be called "taking of property." This may seem something of a play on definitions, but, on the contrary, the differences are fundamental. Advocates of the use of the police power for the protection of street reservations recognize that there must be limitations upon that use and that there is a line to be drawn by careful judgment where the police power must give way to eminent domain. The administrative policy and procedure of Kenosha, Wis., described earlier,[2] is an example of the intelligent drawing of this line of demarcation.

The police power is based upon the principle of substantial equality of rights and restrictions. A building line may completely destroy the usefulness of an exceptionally shallow lot. If, by reason of existing improvements or other peculiar conditions, it may seem desirable to make all of a street widening on one side of a street, it is obviously inequitable to establish a police power building line on this one side of the street and none on the other, especially if the lots fronting on the two sides of the street are of approximately equal depths. If the administration of a building line prevents the alteration of a building, thereby

[1] See *Transactions* of the American Society of Civil Engineers, Vol. 96, 1932, pp. 896–913.
[2] See pp. 36–40, 104.

destroying a reasonable degree of usefulness, there is also just claim for damages.

Variation in setback depths for frontages upon the same street may at times be a doubtful expedient. Widening setbacks upon regional trunk thoroughfares of more than local importance, being of doubtful benefit to fronting property and to the neighborhood intersected, may likewise offer reasonable grounds for dispute as to the propriety of police power administration.

These are but typical of the many conceivable conditions under which the property owners affected may be unequally penalized by the imposition of street reservation lines and under which it would seem only just and reasonable that the unfavorable balance of cost or inconvenience should be borne by the community at large or otherwise distributed, through the use of eminent domain or some other form of compensation agreement. In other words, while logic and observed procedure support the legality of the general principle and justify the use of the police power in protecting setback lines and other kinds of street reservations, there are times, as in zoning, when such restrictions are clearly unreasonable and when it becomes obligatory for the community to exercise the right of eminent domain rather than the police power, *i.e.*, arrange to pay direct damages, withdraw restrictions, or grant variances.

Summary of Observations

Whatever may be the theoretical line between the police power and eminent domain or the extent of their respective marginal areas, the following facts stand out from practice, as observed in the course of this study:

(1) Eminent domain is little used for the protection or acquisition of street reservation easements. When there is choice in specific enabling legislation, the police power is favored; and when there is specific eminent domain legislation but no specific police power legislation (and reluctance to make use of it without such specific authority), little or no action of any kind is taken. Such choice and such inactivity appear to grow out of these reasons:

a. Procedure under eminent domain is tedious and complex.

b. The tendency of juries of award is to overvalue building line reservations and to overestimate damages caused by them, with resulting excessive costs.

c. It is a tendency of juries likewise to fail to take earlier awards into account at the time of actual purchase and occupation of the land, with the result that the cost of the two proceedings is frequently greater than the direct cost of a single condemnation.

d. Uncertainty as to extent of costs and damage awards, in procedures whereunder the public is bound to accept jury findings, causes reluctance by city administrations to institute eminent domain proceedings.

e. Administrations are usually reluctant to invest in widening reservations for projects which may be deferred indefinitely.

f. It is difficult to assess benefits and damages for an improvement indefinitely deferred.

(2) Few cities using the police power under either specific legislation or general police power authority appear to be having unusual difficulties in administration or in making the necessary adjustments for cases of special hardship and proven damage.

(3) In general, eminent domain is used only where it has been shown in practice that damages can be approximately balanced against benefits or where the monetary cost to the public can be otherwise reduced to nominal proportions. In some instances it is established by law, ordinance, or policy that easements may not be acquired except in cases where total benefits equal total damages. The practical result in a large proportion of eminent domain procedures, therefore, is that the property owner's actual financial reward is no greater than if proceedings had been under the police power with supplementary provisions for payment of proven damages.

(4) The occasionally observed expedient of deferring final eminent domain action for an indefinite period after initiation by resolution, whereunder the property owner is restrained from building upon the established easement but waits indefinitely for his compensation award, likewise offers little actual advantage to the property owner by reason of eminent domain rather than police power procedure.

(5) Objection is sometimes raised against the use of the police power on the ground that it constitutes a cloud on title. It is difficult to see how this cloud is any more real than that imposed by zoning or by many other accepted police power functions now enjoying approval due to recognition of the fact that reasonably imposed restrictions bestow the sunshine of benefit in equal or greater degree than the cloud of restricted use.

(6) Further objections are offered to police power street reservations because of the relative ease with which such restrictions may be revoked. The same objection is raised against official map procedure. Under procedures lacking sufficient safeguard in the way of provision for public notices, hearings, and so forth, this objection may be legitimate, and instances have been observed of apparent injustice worked upon property owners by revocation of restrictions which they individually had already observed in good faith. It should be possible largely to overcome this objection through carefully prescribed amending procedure.

(7) It was proposed by the Nichols Bill for Massachusetts and is provided by the eminent domain clause of the Standard Planning Act that the protection of street reservations be kept on the tried and safe ground of eminent domain with the objectionable feature of excessive cost at least partially removed by a forfeiture provision whereby all damage claims deferred beyond a specified time become void. Such a procedure, in effect, is already in operation in Massachusetts with what would seem to be far from happy results. The tendency, especially in the case of existing buildings to be restricted against remodeling, is for owners to make claim for damages no matter how remote, — damages which, in the normal course of events, might be deferred many years or which might actually never occur.

(8) The extent to which eminent domain and the police power are being used for the purposes under discussion may be summarized about as follows:

a. Twenty states have eminent domain laws making possible the establishment of building lines for street widening purposes. Only in Massachusetts and, much less so, in Connecticut is eminent domain procedure actually being used to any great extent.

b. In nine of the above states not a single city is reported as making use of its eminent domain authority, while many cities in these same states are establishing building lines for street widening purposes under the police power.

c. Only ten states have specific police power authority for the establishment and protection of street reservations. Police power procedure in the remaining states, where occurring, is under zoning authority or the general police power authority.

Observations of Planners and Administrators

A brief compilation of opinions of men in the field is presented below. Except where otherwise noted, the quotations are from letters and replies to questionnaires received during the preparation of this report.

Mr. Clifford E. Randall, former City Attorney, Kenosha, Wis.:

> . . . As in zoning, the courts have taken different viewpoints and reached different conclusions as to the validity of legislation fixing setbacks and building lines. Some of the state courts have held that the establishing of building lines under the police power cannot be sustained. However, the proponents of legislation establishing building lines, as in the case of zoning, have persevered until now we find a line of authorities, including the United States [Supreme] Court, upholding such legislation as a valid exercise of police power, and it may now be safely said that municipal corporations under the police power have the authority to establish setback lines or building lines or provide front yard requirements provided they are reasonable under the circumstances, and have a substantial relation to the public health, safety, morals, or the general welfare. Where such setback lines are provided no money compensation is paid, but as was said in *Carter v. Harper*, 182 Wis. 148; 196 N. W. 451: "He who is limited in the use of his property finds compensation therefor in benefits accruing to him from like limitations upon his neighbors."
>
> In addition to the benefits accruing to public health, safety, morals, and the general welfare, the intelligent establishment of setback lines with reference to proper street planning, as included in a comprehensive zoning plan, preserves the opportunity to widen streets at the proper time at the minimum cost. When the street is actually widened under the power of eminent domain, the municipality must provide only the funds necessary to pay abutting property owners for the land taken, and the cost of structural improvements that would otherwise have been erected on the land taken will be saved.
>
> Therefore, from a practical standpoint the establishment of setback lines in the exercise of the police power of the city and as a part of comprehensive zoning is the most feasible plan for preserving the opportunity of widening streets at the minimum cost.[1]

Mr. Irving C. Root, Planning Engineer, Maryland-National Capital Park and Planning Commission:

> The Gaithersburg, Md., zoning ordinance . . . has a rather unusual clause providing for a 15-foot setback for all commercial and industrial structures. This will reserve a 90-foot width for the main

[1] From an address delivered Feb. 5, 1929, at a meeting of the Chicago Regional Planning Association.

street and a 30-foot widening for other business streets. This setback is shown on the zoning map and met with complete approval of the property owners at the public hearings on the plan. No doubt the generally accepted authorities . . . would frown on the establishment of setbacks by this method. However, it is being done and to that extent may be of interest.

Mr. L. Deming Tilton, Director of Planning, Santa Barbara County, Cal.:

This phase of planning technique has lagged somewhat behind zoning because so little popular material has been written showing the need. The law is slow to approve police power official maps because popular demand for economical processes of street opening and widening [is] not apparent. The emphasis on zoning should decrease, and more articles should be written showing the tremendous savings that could be effected by a more rational land policy. A large part of the appalling cost of government is due to the inability of cities and states to make intelligent use of lands affected with a community interest and properly belonging to the community.

The [eminent domain] procedure set up in our Planning Act for the establishment of precise street lines is terribly cumbersome and in my judgment unworkable. It has never been used to my knowledge by any planning agency in the state [with the possible exception of very limited use in San Diego] . . . but as long as this procedure stands on the statute books of this state I fear that someone some day will contest our right to use the police power in the establishment of building lines while the statutes specifically provide for an eminent domain method of accomplishment of the same end.

Mr. Hugh R. Pomeroy, Planning Adviser to Kern, San Mateo, and Santa Clara Counties, Cal.:

There has been no conclusive determination that the procedure which we are using in Santa Clara County [official plan lines under the police power] is entirely safe, in view of the different procedure set up in the Planning Act. However, we are assuming that the latter is an eminent domain procedure and that we are free to proceed under our Constitutional grant of the police power to all cities and counties. If the statutes established a specific *police power* procedure, we would be powerless to use any other procedure, but in the absence of any such statutory provision, we feel free to develop our own procedure.

Mr. Carey H. Brown, Executive Director, Rochester (N.Y.) Civic Improvement Association:

From experience in Rochester I believe that the establishment [of building lines] through eminent domain by individual negotiation with property owners for easements is poor.

Mr. Edward M. Bassett, of the New York Bar, Authority on the Law of Planning and Zoning:

A front yard in police power zoning is not an interest in land and is not an incumbrance on land. It can be changed by the local legislative body.

Mr. Robert Whitten, of New York City, Planning Consultant:

In a considerable number of zoning ordinances that I have drafted, the regulations as to depth of front yard only apply where no front yard line is indicated on the map. In this way it is possible to take care of the situations not amenable to general rule. And thus the future widening of a particular street or part thereof can be provided for by a special front yard line shown on the zoning map.

This is an expedient but of course not a satisfactory way of dealing with the problem. Nor is it desirable, on the other hand, to divorce zoning and street planning. We should be able to apply regulations that would combine all the authority of the police power for planning purposes (including zoning).

Mr. Alfred Bettman, of the Cincinnati, Ohio, Bar, Authority on the Law of Planning and Zoning:

The general distinction between what is called the police power and what is called the power of eminent domain is that, in the one case, the public regulates the use by the property owner of his property, whereas, in the other, the public actually takes the property for its own use. Whether the building line, as a part of ultimate street widening, falls within the one or the other is still a debatable question.[1]

Mr. George H. Herrold, City Planning Engineer, St. Paul, Minn.:

St. Paul procedure in building line establishment for purposes of street widening is by charter provision, under the power of eminent domain. We have been fought continuously by real estate interests on making use of this method. They claim that it would result in an irregular development in which new buildings would be set back while the old ones would remain out to the existing street line. [Presumably these same interests would find the same or greater objection in procedure under the police power.] We have never attempted to establish building lines for street widening purposes under the zoning ordinance. Incidentally the zoning ordinance does prevent buildings from going up beyond the building line, and if we should want to widen the street we would not have the buildings to pay for.

[1] See "New Legal Aspects of Zoning," by Alfred Bettman, in *Home Building and Subdividing*, p. 373. (Annals of Real Estate Practice, Vol. III.) Chicago, National Association of Real Estate Boards, 1927.

Mr. L. F. Brinkman, Investigator, Los Angeles City Planning Commission:

> In order to continue in the use of this [police power] ordinance for the establishment of building lines along primary and secondary highways it is patent that some means must be provided whereby property owners adversely affected may be compensated for the lots which are rendered useless by the establishment of such building lines. This is the main problem confronting us at the present time and we hope that in the future some method may be worked out whereby this end may be accomplished.

Conclusions

There is much evidence of rapidly increasing use of the police power for the protection of street widening lines and of reservations for future streets and an increasing body of police power legislation providing procedures to these ends, but this use of the police power and these procedures have been in effect for so short a time and actual experience has been so scanty that it is impossible to describe with conclusiveness the present status of the police power in this field of endeavor. Of the failure of eminent domain procedures to provide the needed protection there can be no doubt. Neither is there any uncertainty among those who have given special study to municipal problems as to the necessity of winning full acceptance of the police power principles in protecting street and highway reservations if the public is ever to be provided with adequate street and highway systems at reasonable cost.

Opponents of the use of the police power for these purposes have said, and the judgments of some courts have been, that the fact that the police power establishment of building lines means a saving to the community is not in itself sufficient justification for the use of this power. But the issue is broader than that. The question is not that of a 10 or 50 per cent greater or smaller cost incurred by using one method rather than another, but a sheer choice between permanent street congestion and confusion and a reasonable opportunity to correct the errors of old street layouts and to insure order in the new. Without some protection of future street widenings and future street locations, costs of widenings and of corrections in location become not merely greater but prohibitive. Theoretically, procedure under either eminent domain or the police power should accomplish the desired results, but in practice, eminent domain procedure seems to have fatal defects. That these defects may be partly psychological does not alter the fact of its unpopularity and disuse. Just now, use of the police power seems to offer the greater chance of

obtaining the desired results. It has for support all the force of whatever of the public welfare may underlie conveniently located streets of adequate width and street systems that can be developed and maintained at reasonable costs. As has been said above, the courts appear to be coming gradually to the point of view that these particular public interests are sufficiently important to justify the use of the police power in their protection. In some states the principle is already firmly established. It remains to extend its application throughout the country and to establish it beyond question or doubt.

As with other forward movements of this kind, progressive communities have taken the lead, trusting that the courts would follow in recognition of well-demonstrated new needs which must give rise to new use of old tools of government, such as the police power. Many of these cities have done this boldly, reasonably, and upon the basis of well-conceived plans and principles. Other cities, more conservative and perhaps more fearful, have undertaken to achieve the same ends by various indirect methods. For lack of well-established lines of procedure, there has been much experimenting, some good and some obviously bad. In the present heterogeneity of police power measures being used for this relatively new purpose, there may be certain advantages, but there are also considerable dangers. Whenever some ill-conceived or badly administered method of procedure runs afoul of the courts, even though reasonably so, it has none the less a retarding effect upon general progress in this field.

CHAPTER V

COMPILATION AND ANALYSIS OF COURT DECISIONS

AN attorney friend once said to the writer, in effect, "The Constitution of the United States or of any country imposes no insurmountable limitations upon legal action demanded by social and economic needs. As these needs arise, interpretation of the Constitution changes to meet them." So it has been in the case of planning law. The same zoning enabling acts that were once regarded by the courts as conferring unconstitutional powers upon local governments are now declared constitutional. It must be expected that efforts to protect and to promote other community interests will be accepted by the courts with question and reservation until the justification of these efforts is well demonstrated. In the field of the establishment and protection of street reservations, whether by so-called building lines or by official maps, we are passing through a period of *demonstration of need.* Progress and trends can be shown in no better way than by a review of court decisions.

The following pages contain citations of selected cases having direct bearing upon the subject of this study. For convenience they have been classified under (*a*) court decisions based upon principles of constitutionality, and (*b*) those based upon the particular method employed or upon the application of a law in specific instances, with both classifications further subdivided into cases relating to the protection of future street reservations or to the establishment of building lines.

Naturally, not all of the cases cited fit exclusively into any one of the above classifications, but where a decision is of importance both as to the constitutionality of the law involved and as to its application to a particular case, notation has been made of this fact.

Court Decisions Based upon Principles of Constitutionality

PROTECTION OF FUTURE STREET RESERVATIONS

Favorable Decisions

Re Furman St., 17 Wend. 649 (N. Y. 1836). The statute incorporating the village of Brooklyn, N. Y., in 1816 provided that one who built upon the location of a street shown on the village street plan was to receive

no damages for such improvements when the street was opened. The provision was held to be constitutional by the Supreme Court of Judicature on the ground that, despite the fact that the filing of the map or plan might constitute a taking of property, the benefits accruing to the owners from such filing was sufficient compensation to satisfy the constitution.

Re District of the City of Pittsburgh, 2 W. & S. 320 (Pa. 1841). A law providing for the filing of plans of districts adjacent to Pittsburgh showing future streets needed in such districts was held to be constitutional. The law did not specifically restrict the right of owners of property to secure damages for improvements erected in the beds of such mapped streets. A later decision (see following case) held that such restriction was nevertheless implied in the law.

Forbes Street, 70 Pa. 125 (1871). This is a case in which the law referred to above was under question, and in which the Court held that if buildings were erected upon such planned streets after the plan was filed, "then it is clear that such buildings were not to be paid for, otherwise the map or plan would be entirely nugatory." The law was held to be constitutional.

Busch v. McKeesport, 166 Pa. 57, 30 Atl. 1023 (1895). Damages were claimed by a property owner for the mere filing of a plan of a projected street including part of the owner's property. The law under which the plan was filed provided that damages could not be recovered for the erection of any buildings in projected streets for which a plan had been filed. Damages were not allowed, and the law was held to be constitutional. The decision read in part:

> If the question, intended to be raised by appellants, were an open one, much might be said on both sides, but we think the underlying principle has been too long and firmly settled in this state, adversely to plaintiffs' contention, to justify us in holding that any new principle was introduced, or change in the law effected, by the clause above quoted. That clause is merely declaratory of the common law of the state. . . .

Halsell v. Ferguson, 109 Tex. 144, 202 S. W. 317 (1918). Two procedures of the city of Dallas were attacked as unconstitutional. One was the following clause in the city charter with reference to the control of subdivision layouts:

> Should any property lying within the city limits as established by this Act be hereafter platted into blocks and lots, then and in that

event the owners of said property shall plat and lay the same off to conform to the streets and lots abutting on same, and shall file with the city engineer a correct map of same; provided, that in no case shall the City of Dallas be required to pay for any of said streets at whatever date opened, but when opened by reason of platting of said property at whatever date platted, they shall become by such act the property of the City of Dallas for use as public highways, and may be cared for as such.

The Building Code of Dallas contained the following provision:

Section 2. That whenever any lots are laid off by any plat, showing a frontage for said lots on any street or avenue in the residence section of the city[,] all buildings erected on same shall keep their frontage on said street or avenue so as to conform to the frontage of the lots shown on any such plat.

The Supreme Court affirmed the constitutionality of both of these provisions, saying:

Since these regulations appear reasonable, and since they promote the general convenience and the public welfare, we can not regard them as subject to attack on constitutional grounds.

Coming within the police power, appellants have to submit to these regulations, without regard to compensation.

Windsor v. Whitney, 95 Conn. 357, 111 Atl. 354, 12 A. L. R. 689 (1920). The Court upheld a statute granting the town of Windsor power to control subdivision development, saying:

A legislative requirement, such as the Act before us, that private highways laid out in land development schemes shall be of a reasonable width and that reasonable building lines shall be established upon these streets before the erection of buildings fronting upon these streets shall be permitted, is well within the police power and does not offend against the Fourteenth Amendment.

Ridgefield Land Co. v. City of Detroit, 241 Mich. 468, 217 N. W. 58 (1928). This case involved question of the right of the city to control the width of streets in subdivisions. The Ridgefield Land Company objected to the insistence of the Planning Commission of Detroit on having two streets on a proposed plat dedicated to greater width than the existing portions of such streets. Detroit had fixed the ultimate width of one of these streets (Livernois Avenue) at 120 feet and of the other street (Pembroke Avenue) at 86 feet. Plats showed widths of 66 feet for each street. The Planning Commission refused to approve the plat for record but finally agreed to do so, provided Livernois Avenue was

dedicated at a width of 83 feet and Pembroke Avenue was given a 10-foot building line in addition to 66 feet shown on the plat. The plaintiff refused to make changes and sought a writ of mandamus which was denied by the lower courts. The State Supreme Court held that the city was within its rights.

Prudential Co-Operative Realty Co. v. Youngstown, 118 Ohio St. 204, 160 N. E. 695 (1928). The Court affirmed the right of the Planning Commission of Youngstown to charge a fee for passing upon the plaintiff's plat, the amount of the fee being based upon the number of lots. The Court further affirmed the full regulatory power of the Planning Commission in territory outside of the city limits but within the jurisdiction granted to the Planning Commission under the state laws.

Some of the important Pennsylvania decisions are the following:

The Widening of Chestnut St., Phila., 118 Pa. 593, 12 Atl. 585 (1888).
In re South 12 St., 217 Pa. 362, 66 Atl. 568 (1907).
Sansom St., Caplan's Appeal, 293 Pa. 483, 143 Atl. 134 (1928).[1]
May v. Westmoreland County, 98 Pa. Super. 488 (1930).
Erie County v. Walker, 103 Pa. Super. 212 (1931).
Penn Builders, Inc., v. Blair County, 302 Pa. 300, 153 Atl. 433 (1931).

Unfavorable Decisions

Moale v. Baltimore, 5 Md. 314 (1854). The Statutes of 1817, c. 148, provided that:

> . . . no person shall be entitled to damages for any improvement unless the same shall have been made or erected before the laying out or locating of such street, lane or alley, or part thereof respectively; . . .

"Although," as Mr. Philip Nichols says,[2] "the statute had been in force, apparently with general acquiescence, for 37 years, the court held it unconstitutional. The owner of the land located for a street might, it was said, not own any other land and so receive no benefit from the plan." The provision was declared unconstitutional.

State v. Carragan, 36 N.J.L. 52 (1872). The Court held that a landowner might not be deprived of the right to use his land in any lawful manner during the period between the laying out and the actual opening

[1] For a discussion of this case, see p. 131.

[2] In "Protecting the City Plan — The Next Steps." Massachusetts Federation of Planning Boards, Bulletin No. 16, Nov. 1924.

of a street, and that not to indemnify him for any buildings so erected would amount to a taking of private property for public use without just compensation.

Baltimore v. Hook, 62 Md. 371 (1884). The Court reaffirmed the principle stated in the case of *Moale v. Baltimore.*

Forster v. Scott, 136 N. Y. 577, 32 N. E. 976 (1893). A lot owned by Forster lay entirely within the area of a proposed street as filed by the New York City Department of Parks. Forster made an agreement to sell his land to Scott, free of encumbrance. When Scott found that the property lay in the bed of a planned street, he refused to buy it, and Forster brought suit. The Court held unconstitutional the statute of 1882 [1] which, in denying compensation for buildings erected in the bed of a proposed street after the filing of maps, virtually deprived the owner of the free use of his land.

Edwards v. Bruorton, 184 Mass. 529, 69 N. E. 328 (1904). Chapter 323 of the Statutes of 1891 was the first Boston Board of Survey Act and provided for legislation with regard to protection of streets very similar to that of Pennsylvania. The Act for Boston, however, went further than the Pennsylvania laws in protecting future streets, providing that not only should a man not be entitled to damages for a building erected in the bed of a mapped street, but that no damage occasioned to the property on which the building stood, or to any part of such property, by the subsequent establishment of any highway, could be recovered by the owner of such property. This provision was not questioned for thirteen years. When a case finally did come into court, it was not in direct attack upon the enforcement of this provision. The plaintiffs were protesting the validity of the actual establishment of a street under the Board of Survey Act on the ground that the entire Act was void because it contained the above section and other sections relating to the assessment of betterments, recently held not to be constitutional in other cases not concerned with the principles discussed here. The Court held that the section regarding nonpayment of damages was unconstitutional, saying:

> This was intended to prevent any use of property inconsistent with the plan after the filing of a plan and before the laying out of a way. If it could have that effect it might materially interfere with the use which an owner might desire to make of his estate for many years, after the filing of a plan and before the laying out of a way. The statute prescribes no compensation for this interference with private property.

[1] Laws 1882, c. 410, § 677.

The Legislature cannot constitutionally so interfere with the use of property without giving compensation to the owner.

People ex rel. N. Y. C. & H. R. R. v. Priest, 206 N. Y. 274, 99 N. E. 547 (1912). This case was similar to that of *Re Furman St.*,[1] but held a similar statute to be unconstitutional.

Re City of New York (Saratoga Ave.), 226 N. Y. 128, 123 N. E. 197 (1919). The Court reaffirmed the principles stated in the case of *Forster v. Scott*, summarized on page 122.

Kittinger v. Rossman, 12 Del. Ch. 276, 112 Atl. 388 (1921). The Court held unconstitutional a provision of the charter of the city of Wilmington which stated that damages could not be collected for buildings erected in the bed of mapped streets.

Granville v. Krause, 131 Misc. 752, 228 N. Y. Supp. 204 (1928). An ordinance providing that no building permits should be issued for buildings within the lines of streets shown on the village plan (as adopted under the 1926 State Planning Law) was held to be unconstitutional. The Court said that the village plan was too visionary, was not comprehensive, and was too vague to furnish an adequate basis for legislation.

Arkansas State Highway Comm. v. Anderson, 184 Ark. 763, 43 S. W. (2d) 356 (1931). The Supreme Court of Arkansas affirmed a decree of the Court of Chancery, which had refused to issue an injunction against Anderson for building upon his land within the lines of a street projected on the town plan of Cabot, Ark., but not opened. The town of Cabot had enacted an ordinance making it unlawful to erect any buildings within the lines of the projected street which had been laid out in preparation for the widening of a state highway running through the town. The Court held that this constituted a taking of property and was an unconstitutional exercise of the police power.

It may not be out of place here to point out that except for the case of *Forster v. Scott*, the unfavorable decisions here quoted seem to have been based rather upon assumptions of the existence of possible hardship than upon actual demonstrations of such hardship. The protection of mapped streets by the police power seems actually to have involved little real damage to property owners. The Maryland statutes were not seriously questioned in 37 years, the New York laws were considered equitable for more than 50 years, and the Massachusetts Board of Survey Act had been used for 13 years before it was attacked. Mr. B. Antrim Haldeman,

[1] See pp. 118–119.

who was Engineer for the General Plans Division of the Board of Surveys of the City of Philadelphia for more than 20 years, has said that not once during his service with Philadelphia did he observe a case of uncompensated damage or hardship to a property owner because of the mapped street laws.

ESTABLISHMENT OF BUILDING LINES

Favorable Decisions

There are many decisions upholding the constitutionality of front yard building lines established under zoning ordinances. A few of these are cited here.[1]

Pritz v. Messer, 112 Ohio St. 628, 149 N. E. 30 (1925), rehearing denied, 150 N. E. 756 (1925). This case sustained the constitutionality of a zoning ordinance which had been attacked as violating the Constitutions both of Ohio and of the United States, but granted the plaintiff relief in this particular instance because of a clause in the zoning ordinance excepting buildings for which permits had been issued. The Court said:

> This problem must be viewed from the standpoint of coming generations. Regarded from the limited outlook of the immediate present, it is easy to claim with some degree of cogency that there is no relation between these measures and the public health, safety, or morals. Taking a long view into the future, however, and looking back into the past, to remind ourselves what detriment the unrestricted congestion in city life, both of traffic and housing, has already done the public welfare, we do see a real relation between the substantial material welfare of the community and this effort of the city to plan its physical life.

Wulfsohn v. Burden, 241 N. Y. 288, 150 N. E. 120 (1925). The Court held the zoning ordinance to be constitutional, saying that:

> Being designed to promote public convenience or general prosperity as well as public health, public morals or public safety[,] the validity of a police regulation must depend upon the circumstances of each case and the character of the regulation for the purpose of determining whether it is arbitrary or reasonable and whether really designed to accomplish a legitimate public purpose.

Harris v. State ex rel. Ball, 23 Ohio App. 33, 155 N. E. 166 (1926). This decision was based both upon method and upon constitutionality.

[1] For a more complete list, see pp. 12, 13, and 14 of *Zoning Cases in the United States* by Edward M. Bassett and Frank B. Williams. (New York, Regional Plan of New York and Its Environs, 1928.) More recent decisions are noted in the "Zoning and Planning Notes," edited by Mr. Williams, in *The American City*, and, up to October, 1934, in "Legal Notes," also by Mr. Williams in the quarterly, *City Planning*.

The Court held that the burden is upon the property owner who assails the setback provision to show by clear and convincing proof that the said line has no reasonable relation to the public health, safety, morals, or general welfare. In doing so the evidence offered must be from witnesses assumed to be fully advised with respect to the subject of setback laws and the testimony of the usual and ordinary witness not claiming or having any special knowledge upon the subject of setback laws, generally, will be excluded by the courts.

In sustaining the method of establishing the setback, the Court held as reasonable the provision that the setback lines should be established at the average distance from the street of the buildings in the block at the time of the passage of the ordinance. The case of *Gorieb v. Fox and the City of Roanoke* also upheld the validity of lines established by a similar method.[1]

Weiss v. Guion, 17 F. (2d) 202 (N. D. Ohio 1926). The setback line on a street in Cleveland where Weiss wished to erect a business building was 22 feet from the street line. The Board of Appeals after a hearing recommended that the setback in this district be changed to 10 feet. The ordinance was amended, but Weiss refused to comply with the 10-foot setback, and was therefore refused a permit to build. Weiss sought an injunction from the United States District Court, attacking the constitutionality of the setback ordinance. The Court upheld the ordinance as constitutional. The following is quoted from the decision:

> As a general proposition, it is settled that the establishment of set-back lines is a lawful exercise of the police power. Upon this proposition there has never been any substantial conflict in the authorities. . . . In the light of the authorities it must be held that set-back lines have such a reasonable relation to the public health and public safety as to be presumptively valid.

The ordinance provided that the setback line now established should remain the same in the future even though the street might be widened later. As to this clause the Court said:

> This provision does not disclose, as plaintiff contends, that the dominating purpose in passing the ordinance was to widen the street and take private property for that use without compensation, rather than to promote the public health and public safety. It evidences rather an opinion that the open space will be reasonably adequate from the point of view of the public health and public safety, notwithstanding

[1] See pp. 126–127. For a decision unfavorable to this method of establishment, see p. 130.

the street may be later widened. Its effect is beneficial rather than harmful to the plaintiff's property. It is some assurance against the re-establishment of a new set-back line encroaching further upon plaintiff's property in the event the street is widened, and that plaintiff and other property owners will not be disturbed in the future, if they improve their lots in conformity to the line now established.

Kaufman v. City of Akron, Court of Common Pleas, Summit County, Ohio (Jan. 6, 1927). The zoning ordinance of Akron required a 10-foot setback on a street on which the plaintiff wished to erect a building to the street line. The building permit was refused, and the plaintiff sought a perpetual injunction restraining the City from interfering in any way with the use of his property. The setback provision of the ordinance was attacked as being in violation of both the State and Federal Constitutions. The Court held that the ordinance was constitutional and that the City had the authority, under the police power, to establish reasonable setback lines, that such regulations have a reasonable relation to the public health, safety, and general welfare, and that before such regulations could be held unconstitutional, it would be necessary for the plaintiff to furnish clear and convincing proof that no such relationship existed.

The Court further said:

> From what is known of the beneficial effects of more air and more sunlight which will necessarily be available if the ordinance is enforced the court cannot say that this provision will not promote the public health and general welfare.
>
> . . . When traffic is dense, and the distance between lines of buildings is comparatively narrow, and the buildings are tall, this gas has been known to cause illness and impairment to health to persons working on the first, and even the second floors of buildings so situated, and, of course, it is likely to affect persons in the street and on the sidewalk. But if the distance between the lines of the buildings be increased by twenty feet, and the height limited to fifty feet, as required by the ordinance, the winds and moving currents of air will be better able to dissipate these deleterious products of motor vehicle engines, and the probability of their dilution beyond the danger point is much increased.

Gorieb v. Fox, 274 U. S. 603 (1927). The City Council of Roanoke, Va., passed an ordinance authorizing the establishment of a building line that should be at least as far back as 60 per cent of the existing buildings on one side of a given block. The Council reserved the right to make

exceptions. On the specific block in question, which was in a residential district, the setback was a little more than 42 feet from the street line. Gorieb had secured permission from the Council to erect a brick store 34⅔ feet back, but sought by mandamus to secure a permit to build to the street line. He contended that the ordinance was unconstitutional. The ordinance was sustained by the Virginia courts,[1] and appeal was taken to the Supreme Court of the United States, which affirmed the judgment of the Virginia courts and further affirmed the principle of the constitutionality of the ordinance. The Court said:

> It is hard to see any controlling difference between regulations which require the lot owner to leave open areas at the sides and rear of his house and limit the extent of his use of the space above his lot and a regulation which requires him to set his building a reasonable distance back from the street. Each interferes in the same way, if not to the same extent, with the owner's general right of dominion over his property. All rest for their justification upon the same reasons which have arisen in recent times as a result of the great increase and concentration of population in urban communities and the vast changes in the extent and complexity of the problems of modern city life. . . .
>
> The property here involved forms part of a residential district within which, it is fair to assume, permission to erect business buildings is the exception and not the rule. The members of the City Council, as a basis for the ordinance, set forth in their answer that front yards afford room for lawns and trees, keep the dwellings farther from the dust, noise and fumes of the street, add to the attractiveness and comfort of a residential district, create a better home environment, and, by securing a greater distance between houses on opposite sides of the street, reduce the fire hazard; that the projection of a building beyond the front line of the adjacent dwellings cuts off light and air from them, and, by interfering with the view of street corners, constitutes a danger in the operation of automobiles. We cannot deny the existence of these grounds; indeed, they seem obvious. Other grounds, of like tendency, have been suggested. The highest court of the state, with greater familiarity with the local conditions and facts upon which the ordinance was based than we possess, has sustained its constitutionality; and that decision is entitled to the greatest respect and, in a case of this kind, should be interfered with only if in our judgment it is plainly wrong, (Welch v. Swasey, [214 U. S. 91]), a conclusion which, upon the record before us, it is impossible for us to reach.

Thille v. Board of Public Works, 82 Cal. App. 187, 255 Pac. 294 (1927). A police power building line ordinance of the City of Los Angeles was

[1] 145 Va. 554.

attacked as unconstitutional by the plaintiff. The Superior Court of the county held the ordinance void and ordered a permit issued for a building in violation of the terms of the ordinance.

The City appealed the decision of the Superior Court, contending that the ordinance was within the police power and in accordance with the California Constitution. The District Court of Appeals upheld the City's contention and reversed the decision of the Superior Court. In its decision the Court of Appeals said:

> In providing for the common welfare the statutes of California take into consideration "open space for light," "ventilation," "health," "comfort," "convenience." . . . Police power embraces in its most comprehensive sense the whole system of internal regulation, and extends to the protection of all persons within its jurisdiction, and their health, comfort, and quiet.
>
> . . . the police power is not a circumscribed prerogative, but is elastic and, in keeping with the growth of knowledge and the belief in the popular mind of the need for its application, capable of expansion to meet existing conditions of modern life, and thereby keep pace with the social, economic, moral, and intellectual evolution of the human race.
>
> Changes in living conditions during a comparatively few years have brought corresponding changes in the exercise of police powers, and those advancements are recognized in construing ordinances alleged to be in conflict with them.
>
> Police power is not subject to definite limitations, but is coextensive with the necessities of the case and the safeguards of public interest.

Slack v. Building Inspector, 262 Mass. 404, 160 N. E. 285 (1928). Section 3, Chapter 143, of the General Laws of Massachusetts, permits any city (except Boston) or town to pass ordinances or by-laws to "regulate the inspection, materials, construction, alteration, repair, height, area, location and use of buildings and other structures within its limits" and to "prescribe penalties not exceeding one hundred dollars for every violation of such ordinances or by-laws." The purpose of such ordinances is the prevention of fire and the preservation of life, health, and morals.

Under this section the town of Wellesley passed a by-law requiring that certain classes of buildings be placed back to lines established at 40 feet from the center line of the street.

The plaintiff contended that this restriction was unconstitutional, but the lower court dismissed her petition. Upon appeal, the Supreme Judicial Court of Massachusetts affirmed the position of the lower court,

and held that the purposes of the by-law were those provided for in the law and constituted sufficient reason for police power procedure. The Court also held that the power given to establish setback lines by the exercise of eminent domain, as authorized in other Massachusetts legislation, is an administrative power not inconsistent with the terms of Section 3, Chapter 143.

Sundeen v. Rogers, 83 N. H. 253, 141 Atl. 142 (1928). This case involved a clause in a zoning ordinance requiring auxiliary buildings in certain districts to be placed only on the rear half of a lot. This provision was attacked partly on the grounds that it constituted a taking of property without compensation. The Court held that setback provisions were recognized as valid, and that the regulation was not an appropriation but the restraint of injurious private use.

Appeal of Kerr, 294 Pa. 246, 144 Atl. 81 (1928). The Court affirmed the constitutionality of a setback established by a zoning ordinance in a residence district although apparently real damage was suffered by the plaintiff.

Bouchard v. Zetley, 196 Wisc. 635, 220 N. W. 209 (1928). Here also the Court affirmed the constitutionality of setback requirements although substantial damage seems to have been done the plaintiff.

Young v. Town of West Hartford, 111 Conn. 27, 149 Atl. 205 (1930). Young owned two lots from which five and one-half feet were taken for the laying out of a new street. The city had a general ordinance prohibiting the erection of any building within 50 feet of the street line on any street which had no established building line, unless a permit was issued by the town for such building. Damages were awarded to Young for the taking of his land only.

Young appealed the award contending that the procedure was illegal because no building line had been established at the time of the street layout. The Court affirmed the position of the trial court and further affirmed the constitutionality of the ordinance as follows:

> Building lines may be established in the exercise of that [police] power, without compensation to land owners affected by them, and an ordinance establishing them must be deemed valid, unless it plainly appears that its terms are not reasonable or that its provisions are not rationally adapted to the promotion of public health, safety, convenience, or welfare.

Town of Islip v. Summers Coal & Lumber Co., Inc., 257 N. Y. 167, 177 N. E. 409 (1931). The zoning ordinance of the town of Islip provided

for a 10-foot setback in the business district. Summers was refused a permit to build in violation of the building line. A trial court upheld the refusal of the permit, but the Appellate Division of the Supreme Court gave the lumber company a judgment declaring the ordinance to be unreasonable, arbitrary, and unconstitutional. The Town appealed to the Court of Appeals of New York, which reversed the decision of the Appellate Division and declared the ordinance constitutional. In its opinion the Court of Appeals quoted from Volume VI of the *Regional Survey of New York and Its Environs* (page 135) as to the desirability of retaining setbacks in residence districts when such districts are converted into business districts, with arguments therefor. The Court further said:

> It thus appears that a wise public policy may require the owners of new buildings in business districts under proper conditions to set their buildings back from the street in order to enable their business to function without congesting the streets.

An Unfavorable Decision

State ex rel. Max Wittenberg v. Board of Appeals of the City of West Allis, Circuit Court of Milwaukee County, Wis. (1929). The plaintiff desired to erect a building to the street line on Lincoln Avenue, a street on which a 20-foot setback had been established by city ordinance. Permit was refused by the Building Inspector, and his decision was upheld by the Board of Appeals. The plaintiff appealed to the Circuit Court, which held the ordinance unconstitutional and directed that a permit be issued for the erection of the building.

The City based its defense entirely upon the grounds that the establishment of building lines for street widening purposes was a proper exercise of the police power and did not attempt to argue that the setback in question had been established for any other purpose. The Court held that:

> The presumption of validity of ordinances of this character may be rebutted by a showing that, as applied to the lot owner's premises, the ordinance is palpably unreasonable and arbitrary and deprives the lot owner of a guaranteed right under the Constitution. Such a showing is contained in the record which the court must consider in disposing of the motion.

The Court apparently did not consider the relation of land desired to be reserved under the setback ordinance and the remaining portion of the land.

Court Decisions Based upon Method Employed or upon Specific Application of a Law

PROTECTION OF FUTURE STREET RESERVATIONS

Unfavorable Decisions

Forster v. Scott, 136 N. Y. 577, 32 N. E. 976 (1893). See page 122.

Granville v. Krause, 131 Misc. 752, 228 N. Y. Supp. 204 (1928). See page 123.

Sansom Street, Caplan's Appeal, 293 Pa. 483, 143 Atl. 134 (1928). Philadelphia passed an ordinance establishing a new width for Sansom Street through the business district and forbidding the erection of new buildings on the street in front of the new widening lines. If the plaintiff had set back his building the required distance, he would have had floor space only two and one-half feet deep. Nevertheless the City refused a permit to build to the old line, and the case was taken to the courts, which affirmed the constitutionality of the ordinance but refused to enforce it in this particular case. The Court said:

> The mere plotting of a street on a city plan does not constitute a taking of property in the constitutional sense, so as to give abutting property owners the right to have damages assessed.
>
> . . . . . .
>
> "There need not be an actual, physical taking, but any destruction, restriction or interruption of the common and necessary use and enjoyment of property in a lawful manner may constitute a taking for which compensation must be made to the owner of the property." (20 Corpus Juris, 566.)
>
> We reiterate what was said in the Parkway Case,[2] and in Hermann v. North Penna. R. R. Co., 270 Pa. 551, 113 A. 828, as to the maintenance of the rule, under ordinary conditions, of nonliability of the city for damages for the mere plotting of streets.

ESTABLISHMENT OF BUILDING LINES

Favorable Decisions

Bancroft v. Building Comm'rs of the City of Boston, 257 Mass. 82, 153 N. E. 319 (1926). This case was not primarily directed to the setting aside of the building setback, but in the course of the argument the Court

[1] No distinction is made between building lines and mapped street lines in Pennsylvania.
[2] In re Philadelphia Parkway, 250 Pa. 257, 95 Atl. 429 (1915).

answered the question, "Does a building line reduce the depth of a lot?" as follows:

> The establishment of the building line did not reduce the area or size of the respondent's lot, it did not involve the physical taking of any portion of the lot, but it established a line beyond which the owner was not permitted to build upon, and merely imposed upon the land beyond the line an easement for the public use. . . . Since the establishment of the building line the abutting owner not only owns as much land as he did before, but he can make any lawful use of it he could before, except that he cannot use it in violation of the order establishing the line.

The building line involved in the case in question was a 20-foot setback established by the Street Commissioners of Boston under eminent domain authority.

Roock v. Womer, 233 App. Div. 577, 253 N. Y. Supp. 357 (1931). The Court held that violation of a setback ordinance is unlawful and that neighboring property owners may recover damages from the violator. The ordinance in question was a zoning ordinance of the city of Syracuse.

Unfavorable Decisions

Byrnes v. Riverton, 64 N. J. L. 210, 44 Atl. 857 (1899). The Court held that lines were established without proper notice to the landowners affected. The ordinance was set aside.

Eubank v. City of Richmond, 110 Va. 749, 67 S. E. 376 (1910), 226 U. S. 137 (1912). The building line ordinance of Richmond provides:

> That whenever the owners of two-thirds of the property abutting on any street shall, in writing, request the committee on streets to establish a building line on the side of the square on which their property fronts, the said committee shall establish such line so that the same shall not be less than five feet nor more than thirty feet from the street line.

The ordinance was first upheld by the Virginia courts but was later declared to be invalid by the United States Supreme Court because the method of establishment was declared to be inequitable and unreasonable. The Court said:

> It leaves no discretion in the committee on streets as to whether the street line shall or shall not be established in a given case. The action of the committee is determined by two-thirds of the property owners. In other words, part of the property owners fronting on the block

> determine the extent of the use that other owners shall make of their lots, and against the restriction they are impotent. In what way is the public safety, convenience or welfare served by conferring such power?
>
> . . . There may be one taste or judgment of comfort or convenience on one side of a street and a different one on the other.

Curtis v. City of Boston, 247 Mass. 417, 142 N. E. 95 (1924). A building line was established on certain parts of a street for a period of one year only. The Court held that a building line must operate as a whole and cannot be divided or established for one year only.

White's Appeal, 287 Pa. 259, 134 Atl. 409 (1926). A Pittsburgh ordinance provided for the establishment of setback lines in a residence district by taking the average of existing setbacks on one side of a street within a block. The Court held that it would be confiscatory to enforce such an ordinance, saying:

> The application and consequence of this ordinance is a gross discrimination in that it does not bear alike on all persons living within the same territory. . . . Here it affects property differently on adjoining blocks, or within the same block or on opposite sides of the street. . . . If the lots in a square were of different depths, the owners of the short lots might not be able to build at all on their lots, if they had to maintain the same distance back from the street as the eighty per cent of the buildings already erected on longer lots.

The Ohio courts took an opposite view as to the reasonableness of a similar provision in the case of *Harris v. State ex rel. Ball* (see pp. 124–125), but the New Jersey courts held a similar provision unconstitutional.[1]

Appeal of Alpern, 291 Pa. 150, 139 Atl. 740 (1927). An adverse decision was given regarding required setback on a corner lot fronting on a commercial street and with a side yard on a partly residential street.

Hedgecock v. People ex rel. Reed, 91 Colo. 155, 13 P.(2d) 264 (1932). The setback prescribed in the zoning ordinance had not been properly or uniformly enforced, and the Court held that such failure to enforce the ordinance rendered it inoperative.

James S. Holden Co. v. Connor, 257 Mich. 580, 241 N. W. 915 (1932). The zoning ordinance of Grosse Pointe required a setback on a corner lot along the side street where such setback would be the continuation, without intervening streets, of the street lot line of lots in an adjoining

[1] Ricci v. Meyer, 5 N. J. Misc. 102, 135 Atl. 666 (1927).

residence district, or of adjoining lots in a local business district where front yards were required by the ordinance. The required side yard setback was not less than 10 feet, except that, for a corner lot of record at the time of passage of the ordinance less than 50 feet wide, the side yard requirement might be reduced to one fifth of the width of such lot. The lot belonging to the plaintiff was in the business district.

The side yard requirement was attacked as discriminatory in the circumstances of its application, and the ordinance was attacked as not being a valid exercise of the police power under the zoning enabling act of Michigan.

The requirements of the ordinance were upheld by the Circuit Court, but its decision was later reversed by the Supreme Court in an opinion from which three of the Judges dissented. In reversing the judgment of the lower court the Supreme Court held that the ordinance was unreasonable, and discriminatory in its application.[1]

[1] Text of the decision of the Supreme Court in this case, including the dissenting opinion of Mr. Chief Justice Clark, is given on pp. 145 ff. of *Transition Zoning* by Arthur C. Comey. (Cambridge, Harvard University Press, 1933. Harvard City Planning Studies, V.)

CHAPTER VI

ECONOMIC ASPECTS

A COMPREHENSIVE plan necessarily and inevitably envisages improvements which are to come in the future, — some of them very far in the future. It is this characteristic of a comprehensive plan which, perhaps, is most valuable from the point of view of economy and social benefit to be derived. Protection of future street reservations and future street widenings is a necessary corollary to the carrying out of a comprehensive plan, making possible large public economies and insuring such social advantages and benefits as may come from the design and location of streets calculated best to serve the requirements of access and of free traffic movement, with due regard for such other community interests as the protection of residential neighborhoods. It follows naturally that the further ahead these developments and growth requirements can be foreseen by plan and protected by guidance and restriction, the greater will be these economies and these benefits.

Few cities, counties, or states have had the kinds of guidance and restrictions discussed by this report in operation long enough to show the maximum benefits attainable. Furthermore, the value and economies of some of the most important measures of control can be definitely appraised only with difficulty, if at all. This is especially true of the results obtained through subdivision regulation and through the guiding influence of a well-conceived master plan. By what reckoning can it be determined, either in dollars and cents or in units of social good, just what is the gain derived from a street arrangement that is good over an imaginary street arrangement not so good? It would be as simple to calculate the savings in steps and the advantages in livability provided by the floor plan of a well-designed house over the many bad floor plans conceivable. It also happens that saving money is not so spectacular as spending money and that comparatively few cities have undertaken to estimate with any accuracy either the costs resulting from failure to protect required street reservations against encroachment or the amounts that have been saved by reason of such protection. Enough specific instances of economies, however, have been found and are given in the following pages to illus-

trate in some slight degree the economic potentialities of control in this field. The social advantages of adequate streets and of one type of street arrangement over another are not directly within the scope of this study and, as suggested above, are not readily subject to measured appraisal. Moreover, they have been covered more or less adequately by other writings in the field of planning and probably are not appropriately to be enlarged upon in this discussion.

Few of the figures obtained as to the dollars-and-cents savings that have been realized relate to savings derived from subdivision regulation and control, probably for the reason cited above, *i.e.*, the difficulty of their appraisal. It is virtually certain, however, that this kind of control, because it has been in effect so extensively and over so considerable a period of time, is responsible for a greater volume of actual savings than any other method of protecting reservations for future streets. By this means it has been possible to obtain streets of adequate initial width that are also properly integrated with city plans and with existing street systems. Many cities and counties have been doing good work in this field with effective results over a relatively long period of time, and it may be estimated safely that the total resulting gain amounts to many millions of dollars saved to the taxpayer, — a saving not static but cumulative with the years.

The following are specific instances of economic advantage reported as resulting from the establishment of building lines for future street widenings and from the protection of street reservations against encroachment. This is a selected list including only those instances seeming most clearly relevant to this study. For many cities which give evidence of having experienced equivalent economies, no figures have been obtainable, and limitations upon this study have not permitted original source compilations by the author.

In the foregoing statement and in the illustrations to follow, disproportionate stress may appear to be placed upon public, as opposed to private, benefits accruing from the protection of street reservations. While building lines and other protective measures are of large potential benefit to individual properties, the primary effect of these controls, applied comprehensively as they should be, is collective. Their benefits accrue to the community at large and are shared by the individual citizen in proportion to his participation in community activities, including the use of streets and the payment of taxes. As the community benefits and prospers, so benefits and prospers the individual citizen. Direct benefit

to properties affected by a particular building line varies according to conditions. It is assumed, so far as the individual property is concerned, under either police power or eminent domain procedure, that the two sides of the ledger shall in the last analysis balance in the favor of the private owner. On one side is restriction and possibly a measure of inconvenience amounting in certain instances to loss of effective use of property; on the other, money compensation for property actually destroyed or taken, taxes reduced through resulting municipal economies, generally improved traffic circulation, and frequently increased property value by reason of improved or insured continuity of convenient accessibility.

CALIFORNIA

Los Angeles County. About 500 miles of primary and secondary highways in the city and county have been dedicated, with savings amounting to an estimated $250,000,000, based upon the probable costs of rights of way had it been necessary to acquire them through purchase.

The total mileage of major and secondary highways protected for the full ultimate width required by the Regional Plan of Highways is 363.06 miles. This means that both sides are protected by a building line ordinance unless some physical factor, such as the existence of a railroad right of way or a flood-control channel, makes a building line necessary on one side only. There are, in addition, 29.53 miles of highways with a building line on one side only but with the other side still unprotected because lying within the boundaries of a municipality and consequently beyond the jurisdiction of a county ordinance.

Los Angeles (City). Building lines 15 feet back from the street lines have been established along six local streets, one block long and 60 feet wide, which run parallel between two main thoroughfares. In the four years following their establishment, 23 buildings observing the lines were erected at an aggregate cost of $875,000. The types of buildings put up and their approximate respective costs were as follows:

12 two-story apartment houses at $25,000	$300,000
4 three-story brick apartment houses at $30,000 . .	120,000
7 four-story brick apartment houses at $65,000 . .	455,000

Building lines have been established along primary and secondary highways proposed for future widening as follows:

(1) On Huntington Drive North, a main thoroughfare between Los Angeles and Pasadena, lines have been drawn to insure an ultimate overall width of 60 feet where the roadway is adjacent to the right of way of the Pacific Electric Railway, and of 76 feet on the section not adjacent to the railway.

(2) On Daly Street between Pasadena Avenue and Mission Road, a proposed 80-foot secondary highway about one mile long and now 60 feet wide, 10-foot building lines have been established.

(3) On Normandie Avenue, a secondary highway now 60 to 70 feet wide, building lines have been established between Sunset Boulevard and Wilshire Boulevard, to make possible an ultimate width of 80 feet. A number of apartment houses have been erected in conformity with the new building lines, which protect a distance of about three and a quarter miles.

(4) Proceedings are under way to establish building lines on Figueroa Street between Second and Pico streets. This is a very important north and south thoroughfare which it is proposed to widen ultimately from 80 to 100 feet. Actual condemnation proceedings for the widening have never been started, but the City Council adopted a resolution to that effect in 1926, and it has proved possible to persuade owners to set back several million dollars' worth of buildings to the proposed widening lines.

INDIANA

Evansville. Two miles of streets are protected for future street widening by building lines which have been secured through subdivision control.

Indianapolis. Two miles of building lines for future street widening have been established on Meridian Street, with damage costs of about $10,000.

IOWA

Des Moines. Under a police power ordinance for widening Grand Avenue from 60 to 80 feet, building lines were established but later vacated, owing to the local belief that the ordinance was unconstitutional. However, the lines have been maintained by common consent on the part of the property owners.

Considerable savings were achieved by persuading property owners to build temporary structures within the lines of a proposed new diagonal street, Keosauqua Way. The City feels that it cannot withhold permits to build, but it has been partially successful in securing erection of inexpensive buildings.

KANSAS

Wichita. This city has building lines along approximately 10 miles of streets in a special area district specified by zoning ordinance.

KENTUCKY

Lexington. Building lines have been established on 40 miles of streets through subdivision control. The minimum setback is 15 feet; the maximum about 60 feet.

MASSACHUSETTS

Springfield. A 16½-foot building line was established on one side of a street in 1916 for about one and one-half miles to provide for ultimate widening. All owners signed releases, with no damages paid. There was full compliance until 1927, when, upon petition, the line was modified to permit bay windows and porches to extend.

MICHIGAN

Detroit. For an account of the widening of Livernois Avenue, see pages 62–63.

On Woodward Avenue, a 10- to 12-story hotel was set back to the building line, except for a one-story projection.

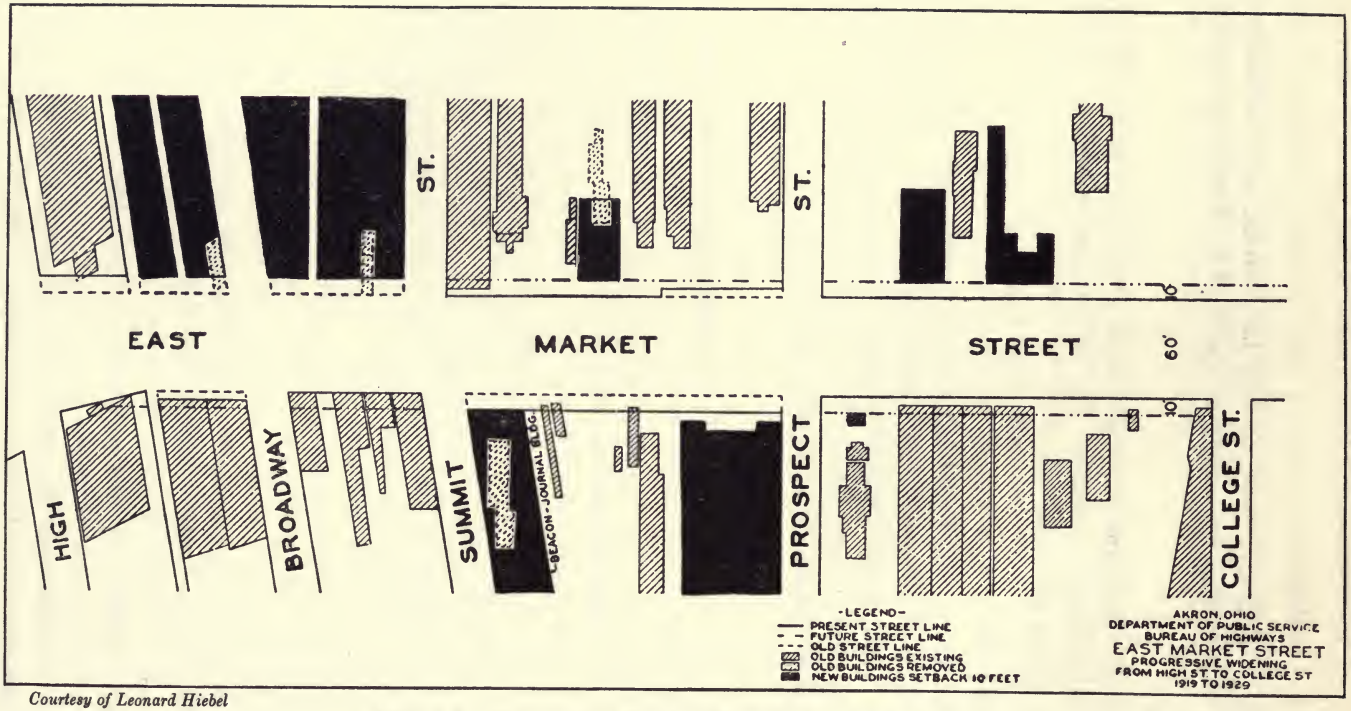
Contrariwise, there may be interest, in passing, in an instance of the expense incurred by the City through the vacation of a building line. On Warren Avenue, building lines to allow widening from 105 to 120 feet were for a time in force and then abandoned. Twenty buildings had been set back to the 120-foot line, and about 20 buildings were on the 105-foot line. Upon vacation, property owners entered suit for damages incurred by setting back to the 120-foot line. The City paid the cost of moving 13 buildings out to the new line at a total cost of $74,292.91.

MINNESOTA

Minneapolis. Up to 1927, approximately 35 miles of building line easements had been established by the City under eminent domain.

St. Paul. There is interest in the cost figures for certain street widening projects in St. Paul in cases where no building lines had been established.

When one block on 4th Street was widened from 60 to 80 feet, the cost of damages to buildings amounted to more than 65 per cent of the total cost of land and buildings taken, as follows:



Courtesy of Leonard Hiebel

FIGURE 3. PROGRESSIVE STREET WIDENING IN AKRON, OHIO

Cost of land	$58,791
Cost of buildings	111,938
	170,729
Less benefits assessed	17,450
	$153,279

Nine street widenings, varying from 14 to 40 feet in amount, were undertaken between 1930 and 1933. The costs, not including any paving, grading, landscaping, lighting, or utility costs, were:

Cost of land	$1,009,096.63
Cost of buildings	2,852,909.84
	3,862,006.47
Less benefits assessed	1,254,781.76
	$2,607,224.71

Thus the damages involved for cutting off or setting back buildings amounted to more than 73 per cent of the total cost of land and buildings and to more than twice the cost of the land.

Very probably not all of these building damage costs could have been saved by the City of St. Paul even if building lines had been established as much as ten years ago, since part of the widened streets run through the downtown built-up area. Part of such costs might have been saved, however, but the chief purpose in presenting the above figures is to indicate the reality of the financial problem facing cities which need to widen their built-up or partially built-up streets when the precautionary establishment of setback lines has been ignored.

OHIO

Akron. In an article on "Akron's Building Line Plan" in *City Planning* for January, 1934, Mr. Charles F. Fisher, former Planning Engineer and Secretary of the Board of Appeals, said:

> The economic value of building lines has not been, and cannot well be, determined. Some indication, however, may be obtained from three widening proceedings initiated in 1929. East Market Street and East Exchange Street, taken together, have been widened from 60 to 80 feet and from 60 to 84 feet, respectively, for a distance of 4.05 miles at a total cost of $3,650,000. It was determined from computations that, if the buildings built back of the building lines had been built out to the street lines, the cost would have been $850,000 more. Nevertheless, in these widening operations, the amount paid for damages to buildings that were built out to street lines before building

lines were established was 2.5 times more than the entire cost of the land acquired. South Arlington Street, a cross-town thoroughfare, was widened from 60 feet to 80 feet, for a distance of over one mile, at a cost of only $40,000. Only one building, in this case, extended beyond the building line. The frontages, in the above cases, were entirely in business or industrial districts.

Over five miles of streets have been widened to building lines. Since these lines were established, total savings due to the construction of buildings back of the building lines rather than flush with the streets are estimated as between $4,000,000 and $5,000,000, as of June, 1933.

Cleveland. When the section of Euclid Avenue between East 69th and East 79th streets was widened from 80 feet to 120 feet, all buildings fronting thereon with one exception had complied with the 20-foot building line ordinance, and no damages were necessary for buildings.

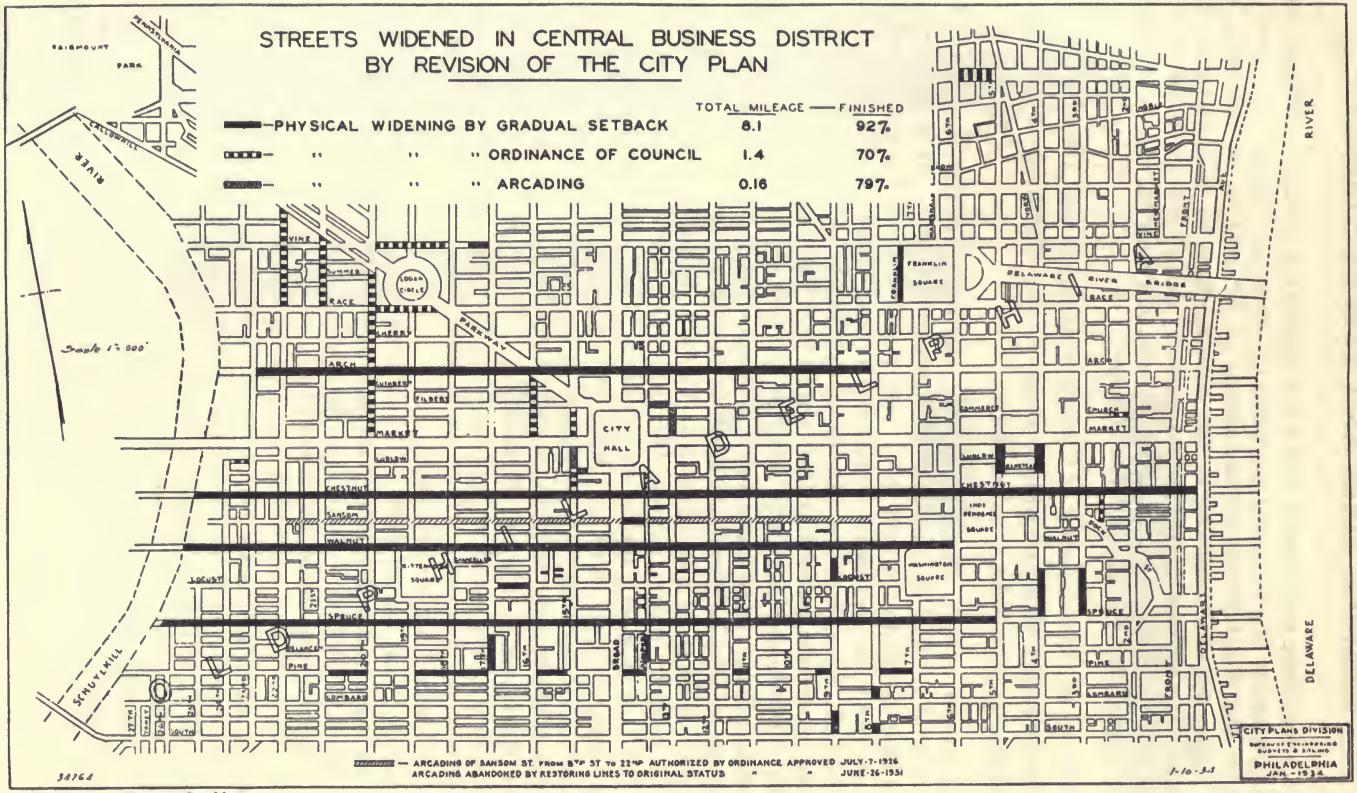
PENNSYLVANIA

Philadelphia. The map of the central business district of Philadelphia on page 143 shows streets widened in this area by revision of the city plan, with the following results:

Widening by gradual setback	8.1 miles	92 per cent completed
Widening by ordinance of Council	1.4 miles	70 per cent completed

Statistics for the entire city are shown in the chart on page 145 made in 1931. At this time there were 100 miles of planned streets, parts of which were opened, protected by Philadelphia's police power procedure with respect to mapped streets. For effect of the official map upon the city as a whole, Mr. Thomas Buckley, Assistant Chief Engineer to the Bureau of Engineering, Surveys and Zoning, has this to say:

> The overall survey covers approximately 365 miles of highways that have been widened on the City Plan by authorized revisions. Of this total mileage, 221 miles have been legally opened to the full width and 144 miles have been opened to the former and lesser width, but not legally opened to the present revised width. For the most part, the unopened portions comprise narrow strips of land of equal width, situated along both sides of these highways. In accordance with the legislation forwarded to you, any improvements to properties abutting on the margins of said unopened streets must recede to the widened lines. Keeping in mind the great mileage of these streets and their proximity to the built-up areas of the City, it is evident that a considerable amount of widening is gradually taking place by the setting back of individual properties.



Courtesy of Thomas Buckley

FIGURE 4

In suburban sections of the City wherein existing buildings do not encroach upon the widened portions of such highways, it frequently is possible for the City to obtain deeds of dedication or releases, when said highways are improved, the contingency in this instance being that the City agrees to make the necessary adjustments to the marginal strips such as setting back curbs, fences, shrubbery, etc., without cost to the owners of the properties affected.

The story of the widening of Chestnut Street is well told by Mr. B. A. Haldeman, former Chief of the Division of City Planning of the Pennsylvania Department of Internal Affairs:

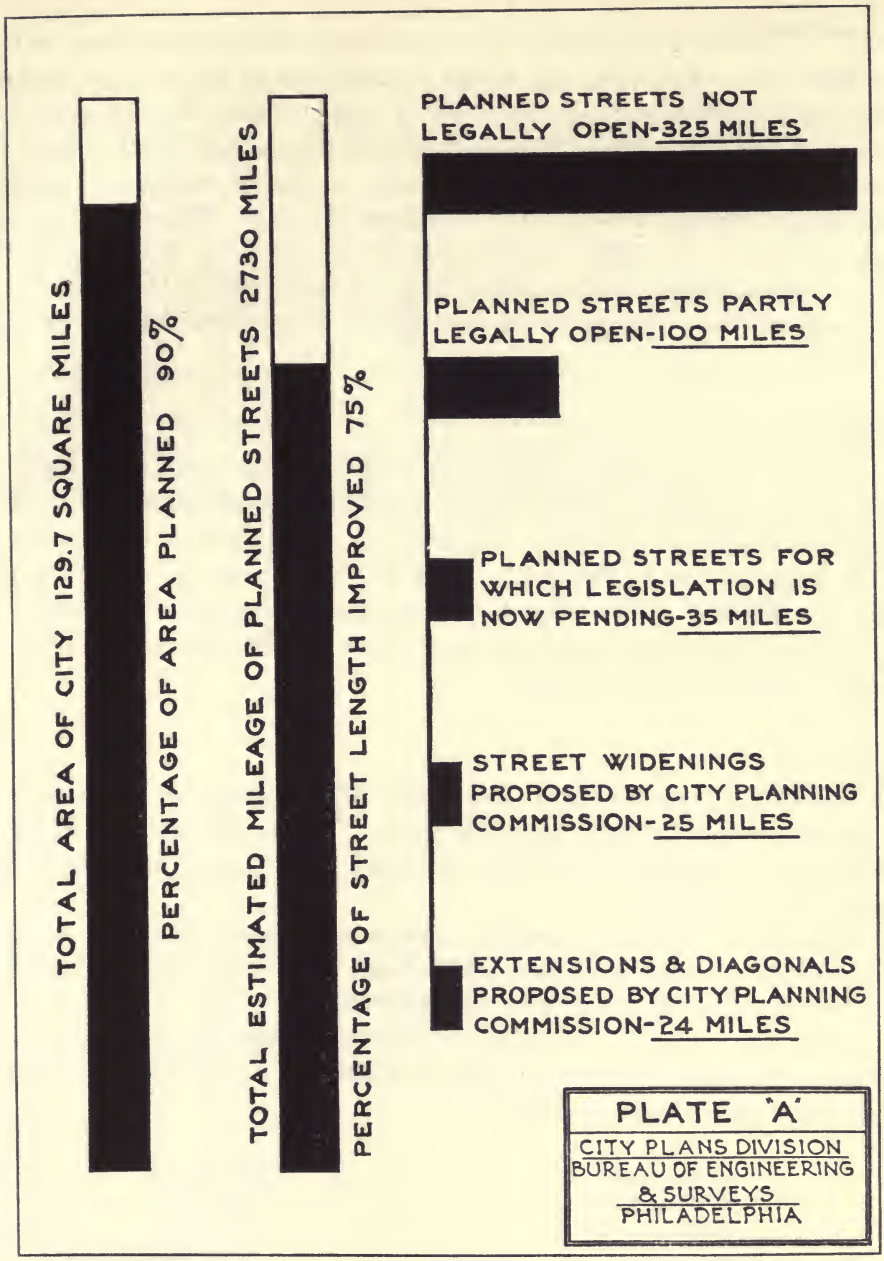
Chestnut street, Philadelphia, is an outstanding instance of the widening of a built-up street in a business district. It is the principal high-class shopping street and the portion that has been widened extends from the Delaware to the Schuylkill Rivers, a distance of about two miles. The street was originally laid out fifty feet wide, and in 1884 an ordinance was passed authorizing the widening of that street upon the City Plan, to sixty feet, five feet on each side. The widening has proceeded from that time until the present, and I think all of the buildings have now been set back to the new line.

That ordinance provided that when a building was torn down or when a new front was put in, the building should go back to the new line and the property owner might then bring suit for damages. The theory upon which the City Solicitor's office has worked in awarding damages is that where the depth of a property exceeds one hundred feet, no damages are awarded except for special reasons. The Wanamaker Building is a good illustration. When the new building was erected it was required to set back to the new line and damages of $125,000 were claimed. None were awarded in the first instance nor in the litigation which followed.

I believe that about $500,000 has been paid for the entire widening, a distance of two miles on the most important [shopping] street in the city. If this had been done at one time it would have been a bill that even Philadelphia could not have paid.

The same policy of widening is being applied to many of the old radiating streets which were formerly from thirty to fifty feet wide. These have been made 60, 70, 80 and in some cases 100 feet. Frankfort Avenue, the old post road between Philadelphia and New York, originally fifty feet wide, has been widened to seventy feet. It is a very important highway, carrying a double-tracked elevated railway. The widening was done under no special ordinance, but under the general ordinance which established the City Plan in Philadelphia. I think there have been no damage suits on the entire street.[1]

[1] From "How Can Narrow Streets in Business Districts be Widened?" in *Proceedings of the Fifteenth National Conference on City Planning*, 1923, pp. 145–146.



Courtesy of Thomas Buckley

FIGURE 5. THE STATUS OF STREET PLANNING IN PHILADELPHIA IN 1931

TENNESSEE

Memphis. The City has made no estimate of its savings through building line establishment, but there is evidence that they are considerable. Many substantial buildings on main thoroughfares have been set back to conform to the new lines, and there is visible evidence of gradual widening of this kind on streets throughout the city. Union Avenue was widened under the 1923 eminent domain act[1] at very little cost to the city. In a distance of over one-half mile on this street in the heart of the business district, only three or four pieces of property had to be condemned.

VIRGINIA

Norfolk. Monticello Avenue had building lines established on both sides for a distance of 5375 feet by Council in September, 1921. The required setback was 10 feet. Frontage to the amount of 4245 feet was given without cost to the City; 1195 feet have been purchased by the City for $24,310. The City is not required to acquire frontage still occupied by buildings until the time when the buildings may be torn down or removed from the lot.

WISCONSIN

Kenosha. Between 1925 and 1930, 83 buildings were erected in conformity with the new building lines. The total frontage of these buildings was 4390 feet, and their assessed valuation at the time of the survey was $2,360,570.

Milwaukee County. Through dedication under platting control, sixty miles of widened highway rights of way have been secured. Savings were estimated as approximately $1,500,000.

The improvements placed back of the established lines in five of the municipalities of the state since August, 1928, when building permits were first issued, are valued as follows:

Granville	$533,415
Milwaukee	219,690
Wauwatosa	212,289
Greenfield	468,305
Lake	488,095

[1] Tenn. Private Acts 1923, c. 415.

The uses of the buildings which were set back are as follows:

Municipality	Residences	Local Business Buildings	Commercial and Light Manufacturing Buildings
Granville	104	35	2
Milwaukee	35	19	1
Wauwatosa	31	19	1
Greenfield	88	29	1
Lake	62	25	1

The residences which were set back were required to be placed not on the building line established by the County Board for future street widening but at least 20 feet back of this building line.

CHAPTER VII

CONCLUSIONS

FROM the tangled mass of evidence gathered, some general conclusions can be drawn. Where street reservation lines have been well established and intelligently preserved, they have resulted in great savings to communities concerned, with relatively little inconvenience to, or disturbance of, private property interests. The possibilities of this element of plan making and plan administration in securing public economies and in promoting the general public welfare are so large as to warrant strong and persistent effort toward evolving effective methods of using it and toward establishing the legality of these methods beyond question.

Up to the present, the spread of measures looking to the protection of street reservations has been retarded by: (*a*) extensive lack of understanding — by the public, by administrators, and by the courts — of the principles involved and of the public advantages to be derived; (*b*) the frequent inadequacy of enabling legislation, as well as failure to make effective such enabling legislation as already exists; (*c*) apprehensions as to legality, resulting in fear on the part of legislative bodies to adopt, and of administrative agencies to enforce, suitable measures; and (*d*) the lack of well-defined, well-thought-out, and uniform methods of procedure.

Greater advance has been made along some lines than along others. Each of the several methods now employed in the protection of street locations and reservations has its special problems and is applicable under certain particular conditions. It becomes necessary, therefore, even in general conclusions, to discuss separately the several procedures in use, even though the essential purpose of all is much the same.

Master Plan and Subdivision Regulation

As previously stated, land subdivision control and the administration of general or master plans may not come strictly within the purview of this study, but because of their effectiveness in accomplishing purposes identical with those of specially established building lines and street reser-

vation lines, they scarcely can be left out of consideration, especially since they happen to be the methods most extensively used and, in many instances, the only methods used.

A great many states have enabling legislation authorizing counties and municipalities to make and administer county and city plans and to exercise varying degrees of control over land subdivision. By means of well-administered subdivision control it is possible to insure proper location and widths of master plan streets, even though only the general location of these streets is shown on the master plan. By subdivision control it is possible to insure that no land will be subdivided without making provision for street projects as shown on the master plan. There is the loophole, of varying proportions, of "metes and bounds" procedure; this, however, can be largely overcome by legislation, tactful administration, education, and moral suasion. The one element of protection lacking in this control is the power to prevent building within the beds of mapped streets at the points of intersection with existing streets.

The many other economic and social advantages to be gained through land subdivision regulation are outside the subject of this report, but, taken with the objectives mentioned above, they make an irrefutable case for universal use of this control. Experience in the field has been accumulating for a sufficient period to have produced well-tried and effective methods. The principles involved have been so generally supported by the courts that there are no legal obstacles to the reasonable use of this control in those states having adequate enabling legislation. A few states, however, still lack such legislation.

We have said that, of the several methods of street reservation protection, subdivision regulation and the administration of a master plan are most extensively used. This does not mean that the field of use is nearly as extensive as it should be. Thousands of municipalities with adequate enabling legislation are doing little or nothing about land subdivision regulation. Just why, it is difficult to determine. Sometimes the reason is mere inertia, sometimes ignorance as to advantages and methods. Some administrations, from reluctance to surrender so much of their prestige and administrative functions to another agency, such as a planning board or commission, elect either to handle subdivision regulation themselves or to ignore it. Whatever the cause, the results are usually the same. When an administration undertakes to exercise this function as a side line, the chances are that the control will be exercised in a desultory way without master plan or other guide and without

uniform policy. Occasional exceptions are found where a city engineer or other staff official takes a special interest in this important function and can find adequate time to devote to it.

The chief prerequisites of effective control of land subdivision for the ends we have in view are:

(1) Adequate enabling legislation. (The Standard Planning Act and the more recent model acts proposed by Messrs. Bassett, Williams, Bettman, and Whitten,[1] contain good model provisions, any one of which may, however, require some adjustment to local requirements.)

(2) A well-conceived master plan.

(3) Platting rules and regulations setting forth conditions of plat approval and general policy.

Without enabling legislation there is considerable question as to the legality of this control, and there is no definition of accepted procedure. Without a master plan there can be no intelligent standards as to what should be required in the way of street locations and widths. Without the platting rules and regulations to serve as guide to both land subdividers and the administration, mutual understanding as to what is to be required is lacking, and weakness is likely to develop through lack of uniformity in policy and in details of procedure and requirements.

The Official Map and Its Administration

A few states have extended their enabling legislation to include authorization for the adoption of an official map. The character of the official map and its functioning have been described previously.[2] This type of enabling legislation has been in effect too short a time for anything approaching conclusive experience to have accumulated, especially since the years of operation have included the depression years with relatively little development activity. The few cities, however, that have adopted official maps appear to be experiencing excellent success with their administration. To what extent this success (actual or apparent) is due to inherent soundness of the procedure, to freedom from the pressures usual in boom periods, or to timid administration by fearful boards of appeals, with easy grant of exceptions to avoid court action, cannot well be determined. So far as we have been able to discover, the procedure has not yet been tested in court except in the state of Penn-

[1] *Model Laws for Planning Cities, Counties, and States.* Cambridge, Harvard University Press, 1935. (Harvard City Planning Studies, VII.)

[2] See pp. 16–17.

sylvania with its long-established legislation for the purpose, where, as previously said, essentially the same procedure as that provided by recent official map laws has been consistently upheld by the courts over a long period of time. That the experience of Pennsylvania has not been a greater source of encouragement and support to the proponents of official map procedure remains inexplicable to this writer.

The official map is more effectively used when supplemented by a master plan than when used alone. The official map gives definite legal status to the plan projects shown thereon. It represents initiative taken by the administration and includes those projects to which the administration is willing to give definite commitment. The master plan, on the other hand, aims to give comprehensive treatment to all phases of general development, no matter how remote. It stands as a sort of guide or net to lead or to catch acts of land subdivision initiated by the private land developer, who might otherwise precipitate certain developments or certain improvements not yet regarded by the administration as sufficiently needed to justify placing them on the official map. In other words, there are many projects, including those apparently remote, which are not properly placed on the official map, but which can be and should be protected through master plan administration against conflicting developments resulting from unexpected or premature ripening of the areas involved.

The official map exercises a specific control over the location of street lines and setback of buildings. It follows that this map must be dimensionally accurate to a degree permitting determination of definite location of street projects on the ground. Zeal for the idea of an official map should not be permitted to extend to the adoption of an ill-defined map showing remote projects of general location and description.

It is probable that all street widening lines shown on the master plan and capable of police power determination should be shown on the official map. Limitation of official map projects to those of immediate importance and to those of relatively certain location and description, as suggested above, is intended to apply more specifically to future streets and street extensions and to complicated street remodeling projects than to widening lines establishing building setbacks. In some instances, complete street layouts for undeveloped areas are incorporated in the official map. This seems a rather doubtful expedient.

Procedure in the adoption of the official map, both in practice and as defined by proposed enabling legislation, follows one of two general

methods. By one method, the existing street system is adopted by ordinance as the official city map, and projects are added individually from time to time as amendments to the original enactment. The other method is to adopt both existing and proposed streets as the official map under a blanket ordinance. The first method is recommended by some authorities as being of more certain legality than the second. Reasons for such differentiation on the grounds of relative legality are not clear to the writer. All official map procedure provides for map amendment upon the giving of prescribed notice and holding of public hearings.

Administration of the official map, with respect to protection against encroachment upon street reservations, is through the building inspector or whatever officer issues building permits, usually with possible recourse to a board of adjustment or appeals. In most cases the board of zoning appeals takes over this additional function. Under practically all of the present official map enabling legislation, with the exception of that of Pennsylvania, which does not provide for boards of appeals, the adjustment board is allowed to use its discretion in permitting the erection of buildings in the beds of mapped streets when literal enforcement of the official map provisions are shown to work special hardship upon a prospective builder. Some provision must be made for cases of exceptional hardship, but it should be recognized that such discretion placed in the hands of boards of appeals holds the seeds of virtual nullification of the official map, just as has proved to be the case with the operation of many such boards in zoning. If the board of appeals is essential to safe and reasonable administration of the official map, then the extent of the powers of this board should be clearly defined and limited.

Police Power Building Lines

There are three general types of police power building lines:

(1) Those established on the official map as mentioned above.

(2) Those established individually by special enactment, not as features of an official map, and with or without specific enabling legislation.

(3) Those established under zoning by special provision in the zoning ordinance.

All three types, in the sense discussed below, may be established for the protection of ultimate street widenings and are, in effect, street reservation lines.

Little further need be said specifically about lines of the first type. They represent perhaps the most direct method of establishing building

lines for street widening purposes and are supported by the most clearly defined enabling legislation. There are, however, only a few states with official map enabling legislation, and in all but one of these states this legislation has been in effect too short a time to provide any great amount of experience.

Building lines of the second type, established by individual and special enactment, are to be found in several states, notably California, Illinois, Iowa, Michigan, Texas, and Wisconsin. They offer no unusual problems or principles except that, in so far as they give rise to spot planning without the guidance and confirming background of comprehensive or master plans, they are a questionable practice. Police power measures, especially, should be based upon comprehensive analysis and determination of the street development requirements of the whole community; any attempt at piecemeal solution of the problem is of doubtful expediency.

The third type of building lines, established under zoning, either by special provision in the zoning ordinance or by incorporation in the zoning map, or by both, is in all probability much more extensively used at the present time than either of the other two types. This is by far the simplest method of establishing building lines. Every state has some kind of zoning authority. Most, if not all, cities giving special thought to their future development requirements have zoning ordinances in effect and administrative machinery already in operation.

Leaving the second type of building lines out of consideration as relatively undesirable, the choice of the theoretically better method lies between the first and third types. Which will ultimately prove more effective is still uncertain. Most of those few cities, outside of Pennsylvania, that have used the official map method also have zoning ordinances and, apparently, have deliberately chosen the official map method as more promising. As to relative legality, it is difficult to see any difference. Both procedures are under the police power and are intended to accomplish identical purposes through identical restrictions upon private property and through the use of identical administrative machinery. As suggested above, the zoning method appears to have the advantage of simplicity in enactment, if not in administration, as well as the present, perhaps temporary, advantage of the universal authorization of zoning. On the other hand, the official map method may be more conducive to proper correlation of widening lines with the comprehensive thoroughfare plan. This is not necessarily so, because it is equally important that

zoning be likewise correlated with the comprehensive plan, although in practice, unfortunately, zoning is often carried on as an unrelated function.

The case for police power building lines for widening purposes versus eminent domain lines has been presented earlier, particularly in Chapter IV, and the conditions for the reasonable use of the police power have been more or less generally set forth. Perhaps it would be well to treat these conditions in greater detail at this point.

While the facts obtained and the trends shown by this survey are strongly in favor of the police power method, both by reason of its successful use and its apparently inherent soundness and justification, it seems equally apparent that there are limits to the proper use of the police power for the objectives sought, and that under certain circumstances the police power method should give way to an eminent domain procedure or to some other method providing for the purchase of needed easements. A few of the typical conditions under which one or the other or both procedures might presumably be used successfully are listed below. The procedures suggested for certain typical circumstances or conditions are drawn from the general conclusions of the writer rather than exclusively from specifically observed practice. In a number of observed instances the police power is being used hazardously, in the opinion of the writer, and without sufficiently reasonable justification.

THE APPLICABILITY OF THE POLICE POWER

The following discussion of the applicability of the police power to street widening problems, including suggestions as to possible limitation upon its use, is based upon the belief that most setback requirements occasion a certain amount of inconvenience or sacrifice upon the part of the individual property owner, and for this reason, when imposed under the police power, should be uniform certainly for all property on the street concerned and, as far as possible, for all property within a given community. From some points of view, the conclusions reached may well seem too conservative. The "region" involved may be regarded as the community, and protection or furtherance of the general good of the "region" may be regarded as paramount to local considerations. Also, since "taking of land" is left to later action when full value will be paid, presumably with allowance for damages, it might be assumed that all inequality of treatment will be absorbed by this later action. However, such instances as are hereafter listed as questionable carry a dis-

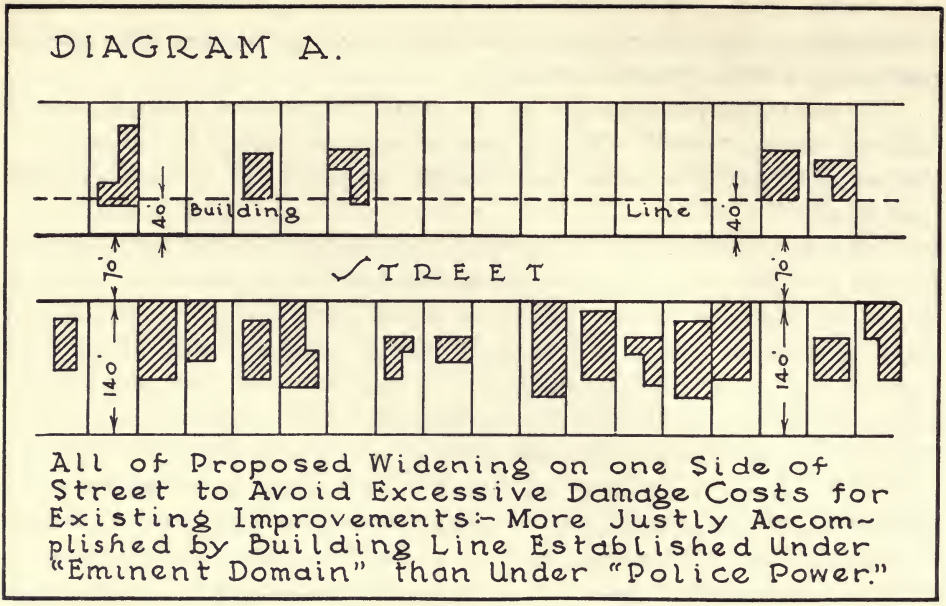
proportionate element of doubt and should be approached with special caution in a field so undetermined.

The use of the police power for the establishment and maintenance of building lines for street widening protection would seem, however, to be thoroughly justifiable when the required setbacks are of the following four kinds.

Setbacks of moderate depth, the depth depending somewhat upon depth of lots but probably not exceeding ten to twenty feet. A modest setback, even in heavily built-up business districts, is not likely to cause much actual inconvenience or injury to new buildings by reason of their being held back of the line of existing buildings. A reasonable setback depth probably will be less in built-up business districts than in residential districts, but in business districts the individual property owner frequently finds benefit in the parking space provided during the interim between the time of the establishment of the building line and actual street widening. In few instances will widening of more than 10 to 20 feet be necessary except to provide for heavy through-traffic movement of questionable local benefit, in which cases it would seem reasonable to place a proper proportion of the burden of inconvenience or injury upon the community or region through eminent domain or other direct purchase procedure.

Setbacks of approximately equal depth on the two sides of the street. Where there are more extensive permanent improvements on one side of the street than on the other, or where the depth of lots on one side of the street is greater than on the other, it may be found desirable to take all or the greater portion of the land needed for widening from one side of the street. However, to place all the burden of inconvenience and sacrifice of use of property upon owners on one side of the street for a project of equal benefit to property on both sides does not appear to be equitable treatment and hence, not properly to be negotiated under the police power.

Setbacks for widenings intended primarily to benefit local traffic and/or to provide desirable spaciousness for improvement of the street upon which the lines are placed. Widenings to provide for trunk highways and the accommodation of heavy through traffic, except possibly in open country where protective design and arrangement of access streets and roads are still possible, are of doubtful benefit to fronting property and, at the same time, are likely to require setbacks of extreme depth. It would seem that use of the police power for the protection of such widenings is less clearly



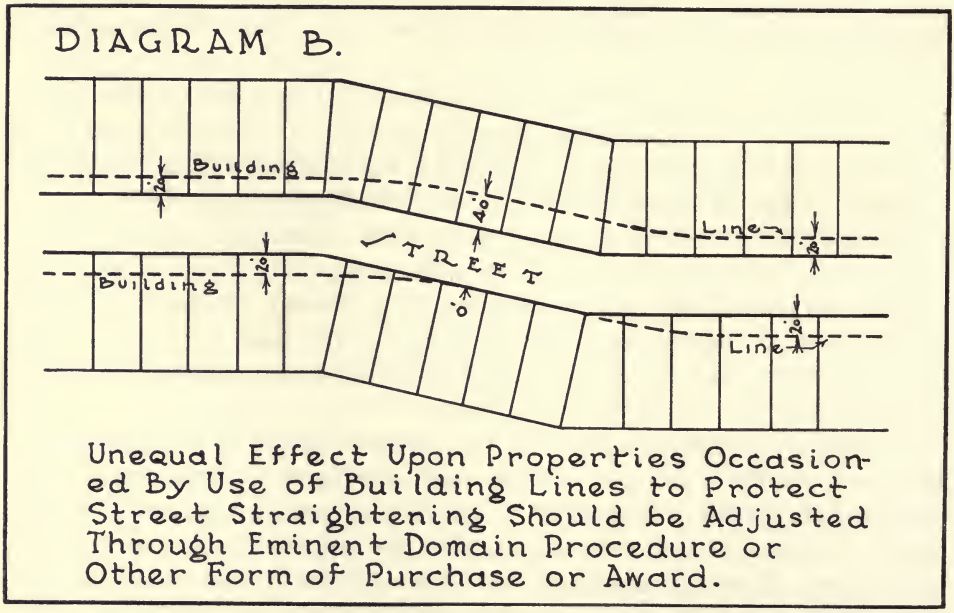
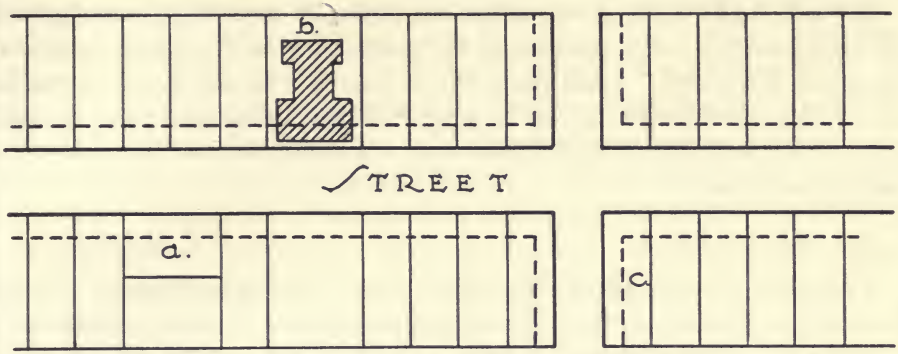


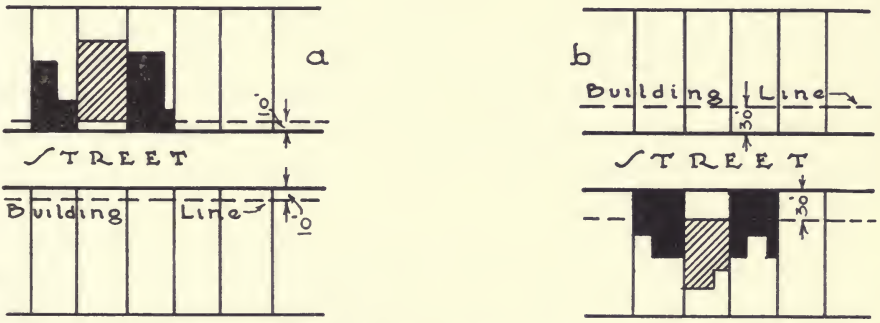
FIGURE 6. TYPICAL STREET WIDENING PROBLEMS

DIAGRAM C.



Typical Cases Requiring Special Adjustment Under Police Power Procedure:- "a" The Abnormally Shallow Lot; "b" A Building Extending Beyond The Building Line Which May Not be Altered Subsequent to Establishment of the Line; "c" The Narrow Corner Lot Rendered Relatively Useless.

DIAGRAM D.



Depth of Building-Line Setback is a Factor of Reasonableness:- Pocketed Buildings Set back to Shallow Lines as Shown by "a" Suffer Small if Any Damage; While Under Extreme Setback as Shown by "b" Relatively Greater Damage is imposed, Especially Upon Narrow Buildings on Narrow Lots.

justified than for the protection of more local improvements of less extreme character.

Setbacks based upon a comprehensive plan for community development and improvement. A condition of the proper use of the police power is equitable treatment. Such equitable treatment, as well as the needfulness of individual projects, can be more certainly determined and demonstrated if all building line establishments are based upon a comprehensive analysis and plan.

EXCEPTIONAL CASES

In addition to the conditions under which, as implied above, the use of the police power may prove questionable, there are other typical cases that would seem to require some form of adjustment or the use of other procedure.[1]

Where setbacks of irregular depth must be applied either to straighten a street incidentally to widening it, or to avoid existing improvements. This again almost certainly involves inequitable restriction of property and often seriously diminishes the usefulness of those lots most extremely affected. See Diagram B, page 156.

Where lots are exceptionally shallow and would have their usefulness and value seriously injured by restriction. Occasionally the setback line will include so much of a lot as to render the remainder virtually useless, in which event it seems clear that the owner should be compensated for the loss of use of his property or be granted a variance. Immediate compensation is preferable because it removes the possibility of injury to adjoining property by a projecting building, and is likely to involve less expense than subsequent damages to improvements made under grant of variance. See Diagram C, page 157.

Where lot depths along a street are uniformly shallow. Most building lots as laid out in this country, especially in business districts, are deeper than actually needed for efficient use, but cases do occur when reduction of depth cuts into useful area. In such instances it would seem necessary

[1] In discussing "Methods of Establishing Setback Lines" in *The American City* for Dec. 1927, p. 772, Mr. Rollin L. McNitt says of his experience in Los Angeles: "We experimented with the method of declaring that on no street should buildings be erected closer than fifty feet from the center line. The theory seemed good, and may still prove sound, but practical difficulties arose: (1) What depth of lot could not afford such line and how could automatic exceptions be made? (2) What about the sides of lots at the ends of blocks, where property faced upon a cross-street? (3) What about similar cases where valuable business frontage, at the end of blocks, would have front footage sliced off? (4) What about corner lots in any case? (5) What about steep hillsides, where 26 feet is the maximum practical width of street and abutting lots are wide and shallow?"

to provide some method of compensation for easement. The average depth of store buildings in the smaller cities and in neighborhood business districts probably does not exceed 60 feet. Add to this 20 to 30 feet for rear yard requirements under zoning and for service access, and a basic efficiency depth of possibly 90 feet is indicated. For such property, the depth restricted against structural improvement becomes of rapidly less value as depth of lot increases. In the business centers of large cities, where it is customary and practicable to occupy the entire block depth from street to street, or where deeper business structures are practicable, potential damage to property through creation of building lines becomes greater, and, when setbacks cut into usable depth, the balance between damage and benefit must be given careful consideration. When the setback taps merely excess depth, value of the easement should be considered as if taken from the rear of the property and not from the front. Usefulness of the buildable depth is the important factor.

Where corner lots have setback applying at the side. Setbacks naturally apply with exceptional severity to corner lots with depth running with the setback line, and the owners of these lots are in many instances clearly entitled to relief. See Diagram C.

Where narrow lots are pocketed between buildings set out to the old line. Setbacks up to possibly five or ten feet involving the pocketing of new buildings are not likely to cause great injury even to narrow lots and buildings and may offer opportunity for architectural distinction and advantage in display, but greater setbacks may place such lots and buildings under a business handicap which should be taken into consideration. This does not apply in the same degree to wide frontages, for in these cases the setback may even be used advantageously for special architectural treatment or by the provision of off-street parking space for the convenience of patrons, or for both. See Diagram D, page 157.

Where existing buildings, by being located within a building line reservation, may be kept from needed alteration. Most setback ordinances prohibit all but minor alterations to existing nonconforming buildings. The setback line may be in force for many years before property is acquired and compensation is awarded. This enforced long delay in altering existing buildings may upon occasion cause considerable financial loss to owners, which again must be recognized by some form of relief. See Diagram C.

WIDENING LINES SUPPLEMENTED BY ZONING FRONT YARD LINES

Widening lines placed upon residential streets, likely to remain residential, should be supplemented by provision for front yards after widening has taken place. Two ways of accomplishing this are:

(1) To increase the setback depth to a point calculated to provide for both the needed widening and the desired front yards. (This method is applicable when zoning setbacks are provided specifically for individual streets, either by indication on the zoning map or by description in the ordinance.)

(2) To provide that the required front yards shall be measured from the widening line rather than from the existing street line. (This method is applicable in cases where, as in most zoning ordinances, front yards of uniform depth throughout a given residential district are provided for by a general clause.)

GENERAL ADMINISTRATION AND GRANTS OF VARIANCE

Among the reasons for which boards of appeals grant variances to setback restrictions are the following:

(1) Uncertainty as to the legality of the restrictions which they have been called upon to apply.

(2) Apparent overbalance of the community good to be derived from the literal enforcement of a restriction by the inconvenience or injury caused to the individual in a specific instance.

(3) Lack of financial and administrative provision to relieve an injured property owner by any other means than by the grant of a variance.

The first condition is probably more or less unavoidable until such time as the legality of this procedure, relatively new to most states, has been clearly established. But the board of appeals should act with a strength of conviction at least equal to that displayed by the legislative body in its enactments. A weak board of appeals can easily nullify a setback restriction, as has been well demonstrated in zoning administration.

The second condition is right and proper, provided the long-time interests of the community are given full consideration.

The third condition should be met by the administration through the provision of an emergency purchase fund and the setting up of such other administrative machinery as may be necessary. The effectiveness of such provisions as supplementary to building line administration under

the police power is well demonstrated by the experience of Kenosha, Wis.[1]

In actual practice, a frequent condition of variance in the administration of both setback lines and future street reservations, is limitation of permit to temporary structures, either with or without an agreement clause providing that, when the reserved land is taken by the public, the public will not be liable for the cost of these structures nor for costs or damages occasioned by their removal. When no such agreement is obtained, the board (operating here in the field of uncertainty of the first of the conditions listed above) limits its effort to urging an improvement of minimum cost likely to involve a minimum amount of damages at the time of public occupation of the land. The longer established practice in Pennsylvania, however, has been to refuse the building permit; if buildings are built contrary to restrictions, the owner simply forfeits all claims to subsequent damages. Relief is by direct appeal to the courts.

The great danger of variances without agreement placing the burden of damages and other costs upon the builder, no matter how much "minimum investment in improvements" may be insisted upon, is that of the gradual building up of a nullifying precedent. Risk can be divided with reasonable safety by providing, as has been done in a number of cities, that, if the public occupies the property within a period of say four years, damages will be paid, but, if the building constructed under variance is not disturbed by the public during that period, obligation for damages for removal of the structure remains with the owner.

Eminent Domain Building Lines

Procedure in establishing building lines under eminent domain varies in detail but in principle is essentially the same throughout the country. Again, for the purposes of this study, concern is only with the acquisition of easement over the land and not with taking fee in the land. Such easements usually are limited to restriction against use of land for construction purposes and leave the land in the unrestricted use of the owner for such purposes as front lawns, gardens, tree planting, and automobile parking.

Protecting the eminent domain building line is as simple a matter as protecting the public street against encroachment. To the extent of restrictions included with the easement, the property is in the ownership

[1] See pp. 36–40.

of the public and is protected in the same manner as public property. Administration of such lines is through the building inspector, who guards against encroachments in issuance of permits, and through the city engineer, who defines and locates the building line for the information of both the building inspector and the builder.

Advantages of the eminent domain method lie chiefly in its unquestioned legality and in its adaptability to conditions where the use of the police power is clearly inapplicable. Principal disadvantages of the eminent domain method are the complexity of its use and its cost. Of these two disadvantages, that of excessive cost is probably the more serious and grows out of the frequent tendency of juries of award to overvalue easements. This tendency is discussed at some length in Chapter IV. It should be said, however, that refusal to use eminent domain procedure more often results from fear or uncertainty as to the expense involved than from actual costs. In many observed instances of use of eminent domain, costs have not seemed excessive nor much, if any, greater than would have been incurred under police power procedure if proper adjustments were made.

Eminent domain procedure might be said to have the further advantage of lending itself to individual or isolated projects, because not involving the same compulsion as police power procedure to deal with problems comprehensively. But, from the broader point of view of general community well-being and governmental economy, there are few instances when determination of individual street widths and widenings should not be made upon the basis of comprehensive analysis and plan.

It has been suggested by at least one student of eminent domain procedure that both its complexity and its cost might be mitigated by omission of the first stage, that of acquiring easement, and by proceeding directly with taking of fee in the needed land. In cases where actual widening is imminent, this might be the practical procedure and, in fact, is the one usually employed. But for projects indefinitely remote, it would seem extremely difficult, if not impossible, properly to evaluate damages and benefits. For such remote projects there would also arise the question of responsibility for improvement and maintenance of the land acquired, through all the period between acquisition and occupation for street purposes. Such a telescoping of the two operations, acquisition of easement and acquisition of land, might in fact add to, rather than diminish, both complexity and cost.

General Weaknesses and Needs in Present Procedure

The chief general *weaknesses* of present procedure for establishing building lines and street reservations seem to be the following:

(1) Lack of uniformity of methods and of approach. (This is a characteristic only of police power building lines and is doubtless largely due to lack of definition of authority and to the fact that the method is in an experimental stage.)

(2) Frequent resort to indirect methods and failure to "call a spade a spade" with the thought that by some other name it may be more appealing to the public and to the courts. (This again seems due to uncertainty as to legal limitations and again is true mostly of police power procedure.)

(3) All those weaknesses to which reliance upon a board of appeals is heir, though this still possibly represents the lesser of two evils, and one to be overcome by better use of the board of appeals.

(4) General lack of education and understanding as to the advantages of building line and street reservation establishment, upon the part of both the general public and public administrators.

(5) Interrupted policies, especially in cities without active planning boards.

(6) Widespread failure to utilize existing enabling legislation with full effectiveness or at all.

(7) Dearth of specific legislation authorizing official maps and other police power building line media.

(8) Too frequent failure to approach the building line problem comprehensively.

(9) Finally, a remaining, although apparently lessening, element of doubt in the body of court decisions dealing with the several forms of police power procedure, including the official map and building lines established under zoning.

Primary *needs* for the advancement of this form of protection of street and highway development requirements include:

(1) General education of the public and of public administrators as to the social and economic advantages of employing these several methods of control and protection, — a need not limited, of course, to the establishment and protection of street reservations but shared by all phases of planning.

(2) More extensive adoption of master plan and official map legislation. (Present forms of this legislation, as existing in such states as New York and New Jersey, and the *Model Laws for Planning Cities, Counties, and States* recently drawn up by Messrs. Bassett, Williams, Bettman, and Whitten,[1] are probably as effective instruments as can be hoped for until long experience has demonstrated the need for adjustment or for some improved approach.)

(3) Possibly some further development of zoning enabling legislation to clear the way for more direct and better defined procedure in establishing widening lines under zoning. (Whether or not such development of zoning legislation is necessary will probably be determined sooner or later by court decisions. At the present time it would seem that such controversy as may develop will be upon the clear issue of whether or not the establishment of such lines is a legitimate use of the police power, rather than upon the issue of whether they have been specifically provided for by present zoning legislation.)

(4) A sufficient number of clear-cut, favorable court decisions, based upon sound and direct reasoning, to dissolve the fears or reluctance of timid or ultra-conservative administrators to pioneer in a field without voluminously supported precedent.

Model Legislative Clauses and Ordinances

Since the legislative requirements of the functions included in this study fall more logically within specific legislative investigations and recommendations, such as the recent research sponsored by the Harvard School of City Planning referred to just above, no attempt is made in this report to frame new model clauses for legislative enactment. A number of relevant clauses, however, taken from existing legislation and from proposed improved legislation are reproduced in the Appendix of this report.

Variation in Methods and Procedure within the United States

Because of the early evidence of rather marked differentiation, along sectional or geographical lines, in methods and procedure, it seemed at first that it might prove desirable to vary recommendations for procedure by sections, — one method perhaps for New England and quite a different method for the Middle West. But further study brought a fading out of

[1] Harvard City Planning Studies, VII.

these differences, not only in established methods but in basic conditions, which would appear to make differentiation in procedure necessary. It is fully recognized, and has been stressed throughout this report, that no single method is applicable to all conditions nor to all cities. Choice of method must first of all depend upon available legislative authority and local conditions. It is conceivable and quite possible that certain broad regions or sections, by reason of tradition and other background, will favor one method over another, and that some sections will lag far behind others in some of the more progressive phases of the controls here under study. Such choice and such lag, however, are not properly within the scope of this report either for recommendation or prognostication. At present, the police power establishment of widening lines under zoning is most extensively used in the Middle West, while the official map finds its strongest foothold in the Middle Atlantic states. This observer sees no special reason for this except the chance by which strong proponents of the different methods happen to be active in different regions.

Motivation for Street Widening

It may do no harm, in summary, to repeat the statement made in the first chapter that the writer holds no special brief for street widening, as such, and that this study and this report are not directed toward stimulation of street widening nor provision of wider streets, but are concerned merely with methods whereby necessary street widenings and needed streets of any width can be protected for ultimate realization at just and reasonable cost. In other writings the author has attempted to show that street widenings do not always provide the remedy expected of them. This is not to suggest that all street widening is bad. A great many such projects are not only desirable but virtually essential to community growth and well-being. There are border line cases where widenings are justified if their cost can be kept sufficiently low. These border line projects can frequently be accomplished through methods explored in this research. Costs of all widening projects, however, can be reduced greatly through application of one or another of the protective procedures herein described, assuming, of course, that they are initiated sufficiently in advance of actual widening to give them a reasonable amount of time in which to operate.

Apropos of the necessity of particular street widenings, it is interesting to note how various are the points of view as to "essential" widths. When one observes extensive widening proposals for the street systems of

small cities with comparatively small traffic requirements, where existing widths would be the subject of proud boasting by New York City, then one wonders whether there may not be fads in street widths as well as in the length of skirts. Street widths in proportion to traffic requirements, actual, probable, and possible, are important. But even more important are street arrangement and street design directed toward preservation of the livability and usefulness of land abutting or fronting upon streets, and toward the preservation of the livability and usefulness of neighborhood areas served by streets. A street widening which accomplishes merely a wider traffic-way may be only half a solution.

In Retrospect

It has been said of research that it is a means to the compilation of facts in support of a pre-formed opinion. Without attempting to refute the justice of this cynicism, the writer wishes to record that this particular study has not worked out that way. The study *was* started with prejudice and with a considerable degree of pre-formed opinion, but both prejudice and opinion have suffered badly.

These were some of the concepts at the start:

(1) Building lines for street widening purposes cannot be established or maintained through zoning.

(2) The purposes underlying front yard lines and street widening lines are essentially so different that in one case the police power may be used for the protection of these lines and may not be so used in the other.

(3) The police power may be used to protect street reservation lines, including street widening lines, when shown on an official map, but the same police power may not be used to protect street widening lines when established by zoning ordinance on a zoning ordinance map.

Now that the facts have been assembled and logic applied to them, these pre-formed concepts no longer seem to have real foundation. To the writer, the issue seems fairly drawn upon the one simple question: *Is the restriction of the use of private property for the protection of adequate street systems a legitimate use of the police power as understood and accepted by present-day society?* Sooner or later, distinction between methods upon the grounds of relative legality will be brushed aside, and method will remain important only in respect to its relative adaptability to local conditions and customs.

More important and more significant is the growing recognition that, along with the benefits derived from community integration of property,

there is imposed upon property and its owners the obligation of sharing the responsibilities of integration and of maintaining that integration through the processes of change and development. Streets, adequate in width and plan, are essential to community life. New standards — of capacity, alignment, and costliness of improvements — have been imposed on streets by new developments, chief among them the automobile. Costs of remodeling established street systems are great, oftentimes prohibitive. The remedy lies in amelioration and prevention, first through planning and then through protection of plan. The protection of reservations for street widenings and for new streets is perhaps the most important element in the protection of plan. Methods of protection are still a little uncertain and perhaps a little crude, but as to need there is no uncertainty. Methods are evolving and will be perfected.

APPENDICES

APPENDIX I

BIBLIOGRAPHY

Legal Aspects

Bartholomew, Harland. Street replanning in downtown districts of large cities. (*In* Proceedings of 21st National Conference on City Planning, 1929, p. 197–220. plans, tables; with discussion, p. 220–224.)

Bassett, Edward M. Constitutional limitations on city planning powers: building within the lines of mapped streets. (*In* Proceedings of 9th National Conference on City Planning, 1917, p. 202–203.)

—— ——. Front yards in business districts. (City Planning, Jan. 1932; vol. 8, p. 51–53.)

—— —— and others. Model laws for planning cities, counties, and states, by Edward M. Bassett, Frank B. Williams, Alfred Bettman, and Robert Whitten. Cambridge, Harvard University Press, 1935. (Harvard City Planning Studies, VII.)

Bettman, Alfred. Master plans and official maps. (*In* Proceedings of 23d National Conference on City Planning, 1931, p. 50–71; with discussion, p. 72–80.)

—— ——. New legal aspects of zoning. (*In* National Association of Real Estate Boards. Annals of real estate practice, 1927, vol. 3, Home building and subdividing, p. 361–380.)

—— ——. Recent trends in building lines, subdivision control and the acquisition of open spaces. (*In* Proceedings of 21st National Conference on City Planning, 1929, p. 102–112; with discussion, p. 112–113.)

Building-line setback principle upheld by U. S. Supreme Court. (American City, July 1927; vol. 37, no. 1, p. 11–12.)

Chicago Regional Planning Association. Committee on Subdivision Plats and Zoning. Court decisions concerning building line ordinances and the use of setback lines. Chicago, The Association, July 1929. 8 p. Mimeographed.

Dodds, H. W., ed. Notes and events: New Jersey's new planning law. (National Municipal Review, June 1930; vol. 19, p. 449.)

Fisher, Charles F. Set-backs or building lines by zoning or otherwise. (*In* Proceedings of 20th National Conference on City Planning, 1928, p. 73–78.)

Hartman, Edward T. Zoning decisions. (Bulletin of the Massachusetts Federation of Planning Boards, July 1928; no. 22, whole number, 39 p.)

HUNTER, SIR ROBERT. The preservation of open spaces, and of footpaths and other rights of way: a practical treatise on the law of the subject. 2d edition revised and enlarged. London, Eyre and Spottiswoode, 1902. 567 p.

LANDELS, EDWARD D. Legal aspects of building line ordinances. (Architect and Engineer, June 1928; vol. 93, no. 3, p. 99–102.)

——— ———. Use of the police power in city planning and zoning. (City Planning, July 1929; vol. 5, p. 163–167.)

Paper prepared for State-wide City Plan Conference, Fresno [Cal.], Feb. 14–15, 1929.

LEGALIZING the building line. (Housing Betterment, Jan. 1922; vol. 11, p. 105–106.)

Experience in Cleveland.

LOCKE, W[ILLIA]M J. Set-back lines: power to establish them from a legal standpoint, opinions of legal authorities and courts. (Municipal Journal [N. Y.], Dec. 21, 1918; vol. 45, p. 487–488.)

MOOT, RICHMOND D. The official map: carrying out a city plan under the New York Act. (City Planning, July 1931; vol. 7, p. 187–193. map.)

——— ———. The official map a powerful weapon. (American City, May 1930; vol. 42, no. 5, p. 131–132. map.)

Refers to the Official Map Law of the State of New York.

NICHOLS, PHILIP. Preventing building in officially mapped streets. (*In* Proceedings of International City and Regional Planning Conference, [National Conference on City Planning], 1925, p. 378–391.)

——— ———. Protecting the city plan — the next steps. (Bulletin of the Massachusetts Federation of Planning Boards, Nov. 1924; no. 16, whole number, 20 p.)

——— ———. Review of Standard City Planning Enabling Act. (City Planning, July 1927; vol. 3, p. 216–219; with comment and notes by F. B. W[illiams], p. 219–220.)

PROTECTING the city plan. (Housing, Mar. 1930; vol. 19, p. 73–78.)

Protecting against adverse development stretches of undeveloped territory which the city contemplates taking at some future time for street purposes. The "New York," "Massachusetts," and "Pennsylvania" plans.

PROTECTING the city plan by "elastic streets." (Housing, Dec. 1930; vol. 19, p. 317–318.)

RANDALL, CLIFFORD E. Validity of use of set-back lines for street widening. (Marquette Law Review, Feb. 1929; vol. 13, p. 103–110.)

Address at 1929 meeting of Chicago Regional Planning Association. Substantially same in American City, Apr. 1929.

SHERIDAN, LAWRENCE V. Building line zoning. (*In* Proceedings of American Society of Civil Engineers, Feb. 1925; vol. 51, p. 214–217.)

U. S. DEPT. OF COMMERCE. ADVISORY COMMITTEE ON CITY PLANNING AND ZONING. Buildings in mapped streets. (*In* its A standard city planning enabling act, 1928, p. 34–43.)

U. S. Dept. of Commerce. Division of Building and Housing. Survey of city planning and related laws in 1927 and 1928 [and later editions, 1930, 1931, 1932, 1933], compiled by Lester G. Chase. Washington, The Department, 1929–1933. Mimeographed.

——. ——. Survey of zoning laws and ordinances in 1927 [and later editions, compiled by Norman L. Knauss, 1928–1929, 1930, 1931, 1932]. Washington, The Department, 1928–1933. Mimeographed.

Williams, Clifton. Legal problems involved in establishing set-back lines. (*In* Proceedings of American Society of Civil Engineers, Jan. 1931; vol. 57, p. 119–127; with discussion, May 1931; vol. 57, p. 825–843.)

Williams, Frank Backus. Akron and its planning law. Akron, O., Akron Chamber of Commerce, 1919. 40 p.

——. ——. Enforcing the city plan. (*In* Proceedings of International City and Regional Planning Conference, [National Conference on City Planning], 1925, p. 392–408.)

——. ——. Enforcing the city plan: how to protect the city plan without restrictions on private property which the courts deem unreasonable. (National Municipal Review, July 1921; vol. 10, p. 374–377.)

——. ——. Legal notes. (City Planning, Apr. 1925; vol. 1, no. 1, to Oct. 1934; vol. 10, no. 4. Regular department.)

——. ——. Legal notes: the establishment of the city plan under the police power in the light of a recent Pennsylvania decision. (City Planning, Jan. 1929; vol. 5, p. 57–58.)

——. ——. Streets — setbacks — traffic regulations. (*In* his Law of city planning and zoning, New York, The Macmillan Co., 1922, p. 173–189.)

——. ——. Zoning notes. (American City, June 1923; vol. 28, no. 6, to Oct. 1928; vol. 39, no. 4. Continued as Zoning and planning notes, Nov. 1928; vol. 39, no. 5, to date.)

Experience and Method

General

Godward, A. C. The use of building lines in street widening. (*In* Proceedings of 16th National Conference on City Planning, 1924, p. 200–206; with discussion, p. 207–210. tables.)

Hartman, Edward T. Building lines. (Bulletin of the Massachusetts Federation of Planning Boards, Feb. 1925; no. 17, whole number, 19 p.)

——. ——. To prevent hardening of street arteries. (American City, July 1925; vol. 33, no. 1, p. 11–14.)

Hubbard, Theodora Kimball, and Henry Vincent Hubbard. Control of platting and land subdivision; Street widening. (*In* their Our cities to-day and to-morrow, Cambridge, Harvard University Press, 1929, p. 142–161 and 317–331; p. 197–201.)

McNitt, Rollin L. Methods of establishing setback lines. (American City, Dec. 1927; vol. 37, p. 770–774.)

Local

Conn. Swan, Herbert S. Theory and practice in building lines under eminent domain. (Supplement to National Municipal Review, Sept. 1931; vol. 20, p. 557–566.)

Summarized in City Planning, Apr. 1931, and in Planning Broadcasts, Bulletin of the Planning Foundation of America and the National Conference on City Planning, Mar. 1931.

——. *New Haven.* Olmsted, Frederick Law. Building lines in the first ward of New Haven: report . . . to the Joint Committee of the Civic Federation and the Chamber of Commerce on streets and building lines. (*In* New Haven, Conn. Civic Improvement Commission. Report, 1910, p. 133–138. folded map, table.)

Ill. Chicago. Kramer, William. Why building restrictions fail to restrict. (Illinois Engineer, Feb. 1928; vol. 4, no. 2, p. 3, 7.)

Ind. Indianapolis. Sheridan, Lawrence V., and J. Clyde Hoffman. Front yard and building lines. (*In* Proceedings of International City and Regional Planning Conference, [National Conference on City Planning], 1925, p. 486–492.)

Cites experience of Indianapolis.

Mass. Arlington. Arlington, Mass. Planning Board. Building lines on main thoroughfares. (*In* its Report, 1919, p. 2–3.)

——. *Brookline.* Brookline, Mass. Planning Board. Building lines. (*In* its Annual report, 1915, p. 5–9. illus., [figs. 1–14].)

Reprinted with few omissions in Landscape Architecture, Oct. 1916; vol. 7, p. 22–26. illus.

——. *Watertown.* Watertown, Mass. Planning Board. Streets. (*In* its Annual report for the year ending Dec. 31, 1914, p. 5–13. illus., plan, cross sections.)

——. *Winchester.* Hinds, James. Establishing building lines in a town of 12,000. [Winchester, Mass.] (American City, Dec. 1926; vol. 35, p. 835.)

Minn. Minneapolis. Godward, A. C. Special assessments experience in Minneapolis. (*In* Proceedings of 23d National Conference on City Planning, 1931, p. 149–156. illus.)

——. ——. Menhinick, Howard K. The story of Minneapolis building lines, based on an interview with A. C. Godward. (City Planning, Jan. 1929; vol. 5, p. 51–53. illus.)

——. ——. Olson, Herman E. General report on a study of the building line easement law. [Minneapolis, Minn., City Planning Commission], May 6, 1932. 21 p. Mimeographed. illus., plans, tables.

N. J. New Brunswick. New Brunswick, N. J. City Planning Commission. The New Brunswick plan. New Brunswick, N. J., The Commission, 1925. 92 p. illus., maps (part folded), charts, plans (part folded), diagrams, cross sections, tables. (Herbert S. Swan, consultant.)

N. J. Newark. NEWARK, N. J. COMMISSION ON BUILDING DISTRICTS AND RESTRICTIONS. Relation of area districts to congestion of population. (*In* its Proposed building zones for Newark: tentative report, 1919, p. 18–20.)

N. Y. Buffalo. BUFFALO, N. Y. CITY PLANNING COMMITTEE OF "THE COUNCIL." Set backs. (*In* its First annual report, 1919, p. 26–27.)

——. *New York.* NEW YORK, N. Y. BOARD OF ESTIMATE AND APPORTIONMENT. COMMITTEE ON THE CITY PLAN. Establishment of setbacks or court yards in the city of New York, being the report of the Committee on the City Plan together with a communication from the Secretary of the Committee and a report thereon by the Chief Engineer of the Board of Estimate and Apportionment. New York, Committee on the City Plan, 1917. 15 p. illus., cross sections.

——. ——. SET-BACK lines as an aid to better and cheaper street layouts. (American City, Feb. 1917; vol. 16, p. 144–148. cross sections.)

Article based on report of the New York Board of Estimate and Apportionment, Committee on the City Plan, on establishment of setbacks in New York.

——. ——. WHITTEN, ROBERT. Erection of buildings within the lines of proposed streets laid down on the final map of the city of New York. New York, City of New York. Board of Estimate and Apportionment. Committee on the City Plan, 1917. 7 p. plan.

Ohio. Akron. FISHER, CHARLES F. Akron's building line plan. (City Planning, Jan. 1934; vol. 10, p. 7–18. illus., plan.)

——. ——. KEMMLER, E. A. Progressive street widening by setting back new buildings proves its value in Akron. (American City, July 1929; vol. 41, no. 1, p. 139–140. plan, tables.)

Ore. Portland. MENHINICK, HOWARD K. City planning in Portland, Oregon. (City Planning, Apr. 1929; vol. 5, p. 69–74. illus.)

——. ——. [NOTES on set-backs in Portland, Ore.] (Portland, Ore. City Planning Commission. The Plan-It, various issues.)

Pa. KNISELY, J. HERMAN. City planning and how the Bureau of Municipalities can co-operate. [Harrisburg, Pa., Pennsylvania. Dept. of Internal Affairs. Bureau of Municipalities, 1920.] 16 p. Typewritten.

Address at Convention of Pennsylvania Commercial Secretaries Association, Jan. 17, 1920. Reprinted in Bulletin of the Bureau of Municipalities, Jan. 1, 1921.

Wis. Milwaukee. BENNETT, CHARLES B. Fifteen years of city planning accomplishments in Milwaukee. (American City, Oct. 1930; vol. 43, no. 4, p. 89–92. illus.)

——. *Milwaukee County.* HOWARD, E. A. Planning for Milwaukee County. (City Planning, Oct. 1929; vol. 5, p. 214–221. illus., plans.)

——. ——. MILWAUKEE COUNTY. REGIONAL PLANNING DEPT. Annual reports, 1st, 1924, to date. Milwaukee, The Department, 1924 to date.

Beginning with 1926 combined with annual report of Milwaukee County Park Commission. After 1928 published biennially.

D. C. Washington. Delano, Frederic A. Street encroachments in Washington. [Washington, National Capital Park and Planning Commission], May 7, 1932. 2 p. Mimeographed.

——. ——. Nolen, John, Jr. Status and development of the highway plan [of Washington]. [Washington, National Capital Park and Planning Commission], Mar. 17–18–19, 1932. 4 p. Mimeographed.

Foreign Legislation and Experience

General

U. S. Dept. of State. Bureau of Foreign Commerce. Streets and highways in foreign countries, vol. 3. Reports from the consuls of the United States on streets and highways in their several districts, in answer to a circular from the Department of State. Washington, Govt. Printing Office, 1897. 616 p. plans (part folded), cross sections (part folded), tables. (Special Consular Reports.)

Issued from the Bureau of Statistics in 1891; reissued, with supplementary reports, from the Bureau of Foreign Commerce, in 1897.

Williams, Frank Backus. Planning administration in Italy, Sweden and Germany; Planning administration in England, Canada and France. (*In* his Law of city planning and zoning, New York, The Macmillan Co., 1922, p. 443–497; 498–534.)

Great Britain

Clarke, John J. [Building and improvement lines, street widenings, etc.] (*In* his Outlines of the law of housing and planning, London, Sir Isaac Pitman & Sons, 1933, p. 109–113.)

Great Britain. Ministry of Health. Model byelaws: new streets and buildings. London, H. M. Stationery Office, 1931. 62 p. (Intermediate series, no. IV c.)

——. ——. Model byelaws: new streets and buildings. London, H. M. Stationery Office, 1931. 76 p. (Urban series, no. IV.)

——. ——. Town planning: model clauses for use in the preparation of schemes. London, H. M. Stationery Office, 1928. 49 p. tables (part folded).

See especially, Buildings and building lines, p. 9–14; Sites of new streets and widenings, p. 23; Widenings chargeable upon frontagers, p. 24; Building lines, p. 36; Modification in application of Public Health (Buildings in Streets) Act, 1888, p. 37.

Legal notes: building lines [in England]. (Community Planning, [New Zealand], Sept. 1931; vol. 2, p. 30–31.)

Pepler, G. L. Building lines for shops: opinions and practice of leading civic authorities. (Town Planning Review, June 1925; vol. 11, p. 185–188. diagrams.)

Aberdeen's new act: Aberdeen Corporation Order, Confirmation Act, 1930. (Journal of the Town Planning Institute, Dec. 1930; vol. 17, p. 32–33.)

France

COURCELLE, LOUIS. Alignement. (*In* his Législation du bâtiment, Paris, Dunod, 1930, p. 302–363.)

Germany

ALEXANDER-KATZ, PAUL. Über preussisches Fluchtlinienrecht. Berlin, Verlag von Wilhelm Ernst & Sohn, 1908. 31 p. (Städtebauliche Vorträge, Band 1, Heft 7.)

APPENDIX II

EXCERPTS FROM MODEL LEGISLATIVE FORMS

A. The Standard Planning Act [1]

TITLE III. — BUILDINGS IN MAPPED STREETS

Sec. 21. Reservation of Locations of Mapped Streets for Future Public Acquisition. — Any municipal planning commission is empowered, after it shall have adopted a major street plan of the territory within its subdivision jurisdiction or of any major section or district thereof, to make or cause to be made, from time to time, surveys for the exact location of the lines of a street or streets in any portion of such territory and to make a plat of the area or district thus surveyed, showing the land which it recommends be reserved for future acquisition for public streets. The commission, before adopting any such plat, shall hold a public hearing thereon, notice of the time and place of which, with a general description of the district or area covered by the plat, shall be given not less than 10 days previous to the time fixed therefor by one publication in a newspaper of general circulation in the municipality if the district or area be within the municipality, or of general circulation in the county if the district or area be outside of the municipality. After such a hearing the commission may transmit the plat, as originally made or modified as may be determined by the commission, to council, together with the commission's estimate of the time or times within which the lands shown on the plat as street locations should be acquired by the municipality. Thereupon by resolution, council may approve and adopt or may reject such plat or may modify it with the approval of the planning commission, or, in the event of the planning commission's disapproval, council may, by a favorable vote of not less than two-thirds of its entire membership, modify such plat and adopt the modified plat. In the resolution of adoption of a plat council shall fix the period of time for which the street locations shown upon the plat shall be deemed reserved for future taking or acquisition for public use. Upon such adoption the clerk of council shall transmit one attested copy of the plat to the county recorder of each county in which the platted land is located and retain one copy for the purpose of public examination and hearings of claims for compensation. Such approval and adoption of a plat shall not, however, be deemed the opening or establishment of any street, nor the taking of any land for street purposes, nor for public use, nor as a public improvement, but solely as a reservation of the street locations shown thereon, for the period specified in the council resolution, for future taking or acquisition for public use. The commission may, at any time, negotiate for or secure from the owner or owners of any such lands releases of claims for damages or compensation for such reservations or agreements indemnifying the municipality from such claims by others, which releases or agreements shall be binding upon the owner or

[1] U. S. Department of Commerce. Advisory Committee on City Planning and Zoning. A Standard City Planning Enabling Act. Washington, Government Printing Office, 1928.

Footnotes to the act have been omitted except in the case of note 122, which includes the important alternative police power provision.

owners executing the same and their successors in title. At any time after the filing of a plat with the county recorder, and during the period specified for the reservation, the planning commission and the owner of any land containing a reserved street location may agree upon a modification of the location of the lines of the proposed street, such agreement to include a release by said owner of any claim for compensation or damages by reason of such modification; and thereupon the commission may make a plat corresponding to the said modification and transmit same to council; and if such modified plat be approved by council, the clerk of council shall transmit an attested copy thereof to the said county recorder or recorders, and said modified plat shall take the place of the original plat. At any time council may, by resolution, abandon any reservation and shall certify any such abandonment to the said county recorder or recorders.

Sec. 22. Compensation for Such Reservations. — In the resolution of adoption of a plat council shall appoint a board of three appraisers and shall fix the time and place of meetings for hearings by said board upon the amounts of compensation to be paid for such reservations. Thereupon the clerk of council shall publish in at least two newspapers of general circulation in the municipality once a week for four consecutive weeks a notice which shall contain a general description of the land thus reserved, as shown on the plat, the provisions of the resolution of council including the period of time for which such reservations are made, the time within which claims for compensation may be filed, which shall be not less than three months nor more than six months from the date of the notice, and the time and place of hearings by the board of appraisers. The first hearing shall not be set earlier than 30 days after the date of the first of such publications. Such notice shall also be posted in at least three public places in the neighborhood of or along the line of the location of the reservation.

The board of appraisers shall fix the amounts of compensation to be paid, respectively, to the owners of lands reserved for the period of time as shown on the plat and in the resolution adopted by council. Whenever the clerk of council receives, within the period fixed for the same, any claim for such compensation, he shall transmit it to the board of appraisers. At the time and place fixed for such hearings the board of appraisers shall hear and consider all claims presented to it in writing or in person, including all evidence which may be presented by the claimants or other persons. The board of appraisers shall have the right on its own initiative to investigate and ascertain data or evidence relevant to the question of such compensation. In case of the abandonment of a reservation prior to the time fixed for payment of compensation, the municipality shall be liable to the owner of the land included within the abandoned reservation for the expenses, if any, incurred by such owner by reason of such reservation.

Sec. 23. Report of Appraisers and Council's Action. — The board of appraisers shall, within 90 days after the time fixed for the filing of claims, file its tentative report with the clerk of council, setting forth its findings as to the amounts of compensation to be paid the respective owners of the lands included within the lines of such reservations as located on the approved plat. Thereupon the clerk of council shall publish once a week for two consecutive weeks in at least two newspapers of general circulation in the municipality the fact of the filing of the report of the appraisers and specify a period of 30 days from and after the date of the first such publication within which objections to the report may be filed with the clerk of council. If objections be filed within said period, then the clerk of council shall cause the board of appraisers to hold a meeting, at which said objec-

tions shall be transmitted to the board, and the board may modify its report. The report in its original form or, if modified, in its modified form, shall be transmitted to council by its clerk. Before passing on the report, council may return it to the board of appraisers for reconsideration, and the board may upon further consideration transmit its former or a modified report to council. Council may approve or disapprove the report. If the report be approved by council, council shall provide for the payment of the amounts of compensation set forth in the report within 90 days after the filing of the report with council. In the case of those property owners who file claims payment shall be made through the clerk of council, who shall notify the claimants at the addresses given upon the claims filed with him. Payments to all other persons shall be made through the clerk of the court of common pleas of the county in which the reserved location is situated, by the payment to said clerk of the amounts awarded to such persons; notice of distribution to such persons to be given and made as may be provided by a rule or order of said court. Payments made as aforesaid to the clerk of council or clerk of said court within said 90 days shall be deemed compliance with the above requirement for payment within 90 days. If council disapprove the report or fail to provide for such payment within said 90 days, such disapproval or failure shall be deemed a dismissal of the proceedings and a cancellation of the plat and an abandonment of the reservations of the street locations as shown on the plat, with the same liability of the municipality for expenses as above provided in the case of abandonment by resolution; and thereupon the clerk of council shall cause to be transmitted to the recorder of the county an attested statement of such abandonment.

Sec. 24. Appeal from Compensation Awards. — Within 20 days after the approval of any such report by council, any person dissatisfied with the award of compensation therein contained may file with the clerk of council notice of appeal to a court of the county in which the appellant's land is located having jurisdiction of actions by municipalities to assess compensation for property taken or appropriated for public use for streets. Thereupon, and within 10 days of such notice, the clerk of council shall file with the clerk of said court the report of the board of appraisers approved by council, together with certified copies of the resolution of council and of the notice of appeal. Within five days thereafter the appellant shall give and file with the clerk of said court an appeal bond, running to the municipality and for such amount as may be fixed by the court, to secure the municipality against the costs of the appeal case in the event that appellant fails to obtain an award of compensation greater than that fixed in the said report. Thereupon said appeal case shall be deemed to be filed and pending as a case brought by the municipality to appropriate and assess the compensation to be paid for the reservation of the land of the appellant as shown on the approved plat for the period fixed in the resolution of council, and the procedure shall be in accordance with the procedure specified by law in proceedings for the taking or appropriation of property for public use for streets; and the municipality shall pay the appellant the amount fixed in said case, or, in case it abandons the reservation, the amount of costs and expenses incurred by the appellant in said case.

Sec. 25. No Compensation for Buildings in Reserved Street Locations. — The reservation of a street location, as provided in section 21 of this act, shall not be deemed to prohibit or impair in any respect the use of the reserved land by the owner or occupant thereof for any lawful purpose, including the erection of buildings thereon; but no compensation, other than the compensation awarded in the final report of said board of appraisers as approved by council as provided in section 23 of this act or, in the case of

an appeal, as awarded on such appeal as provided in section 24 of this act, shall at any time be paid by the municipality or public to or recovered from the municipality or public by any person for the taking of or injury to any building or structure built or erected within the period fixed in the resolution of council upon any such reserved location.[122] No com-

[122] *Reservation of mapped streets by exercise of police power:* To aid in the drafting of the statute in those States which may desire to include the police-power method, either exclusively or as an alternative to the eminent-domain method, the text of the section of the New York statute is given here. It is sec. 35 of ch. 690 of the laws of 1926 of the State of New York, entitled: "An Act to Amend the General City Law in Relation to Official Maps and Planning Boards," and reads:

"35. Permits for building in bed of mapped streets. For the purpose of preserving the integrity of such official map or plan no permit shall hereafter be issued for any building in the bed of any street or highway shown or laid out on such map or plan: *Provided, however,* That if the land within such mapped street or highway is not yielding a fair return on its value to the owner, the board of appeals or other similar board in any city which has established such a board having power to make variances or exception in zoning regulations shall have power in a specific case by the vote of a majority of its members to grant a permit for a building in such street or highway which will as little as practicable increase the cost of opening such street or highway, or tend to cause a change of such official map or plan, and such board may impose reasonable requirements as a condition of granting such permit, which requirements shall inure to the benefit of the city. Before taking any action authorized in this section, the board of appeals or similar board shall give a hearing at which parties in interest and others shall have an opportunity to be heard. At least fifteen days' notice of the time and place of such hearing shall be published in an official publication of said city or in a newspaper of general circulation therein. Any such decision shall be subject to review by certiorari order issued out of a court of record in the same manner and pursuant to the same provisions as in appeals from the decisions of such board upon zoning regulations."

As the language of this New York section may be found too special to New York legislation to be followed in other States, the following has been drafted as another model for a section providing for the police-power method:

SEC. 22A. CONTROL OF BUILDING IN THE BED OF MAPPED STREETS. — From and after the recording of any street plat approved by council, as provided in section 21 of this act, no permit shall be issued for any building on any part of the land between the lines of a proposed street as thus platted: *Provided, however,* That the board of zoning appeals of the municipality in which the location of such platted street lies, or a special board of appeals which may be created for the purpose by the council of the municipality, shall have the power, upon an appeal filed with it by the owner of any such land and by a vote of a majority of its members, to grant a permit for a building in such platted street location in any case in which such board finds, upon the evidence and arguments presented to it upon such appeal: (*a*) That the entire property of the appellant, of which such reserved street location forms a part, can not yield a reasonable return to the owner unless such permit be granted; and (*b*) that, balancing the interest of the municipality in preserving the integrity of such street plat and of the municipal plan and the interest of the owner of the property in the use of his property and in the benefits of the ownership thereof, the grant of such permit is required by considerations of reasonable justice and equity. Before taking any such action the board of appeals shall give a hearing at which the parties in interest shall have an opportunity to be heard. At least fifteen (15) days' notice of the time and place of such hearing shall be given to the appellant by mail at the address specified by the appellant in his appeal petition and shall be published in a newspaper of general circulation in the municipality. In the event that the board of appeals grants a building permit in any such appeal it shall specify the exact location, ground area, height, and other details as to the extent and character of the building for which the permit is granted.

It will be noticed that the New York section contains several words, as, for instance, "bed," "official map," "highway," which, while appropriate to the terminology used in the whole New York statute, are inappropriate to the terminology of this act. Therefore, if the New York provisions be inserted by any State, care must be taken to vary the phraseology to fit into the terminology of the act, as has been done in the foregoing section 22A. Other than this matter of terminology the only substantial distinction between the New York section and the above section 22A is that of the

pensation or damages for any such reservation shall be paid or recovered except as provided in sections 22, 23, and 24 of this act.

B. Municipal Planning Enabling Act [1]

By E. M. Bassett and F. B. Williams

Sec. 10. Permit for Building in Bed of Mapped Streets. For the purpose of preserving the integrity of such official map, no permit shall hereafter be issued for any building in the bed of any street, highway, or freeway, shown or laid out on such map except as provided in this section. If the land within such mapped street, highway, or freeway is not yielding a fair return, the board of appeals in any municipality which has established such a board having power to make variances or exceptions in zoning regulations, shall have power in a specific case, by the vote of a majority of its members, to grant a permit for a building in such street, highway, or freeway, which will as little as practicable increase the cost of opening such street, highway, or freeway, or tend to cause a change of such official map; and such board may impose reasonable requirements as a condition of granting such permit, which requirements shall be designed to promote the health, convenience, safety, or general welfare of the community, and shall inure to the benefit of the municipality. Such body shall refuse a permit where the applicant will not be substantially damaged by placing his building outside the mapped street, highway, or freeway.

In any municipality in which there is no such board of appeals, the local legislative body shall have the same powers and shall be subject to the same restrictions. For this purpose such legislative body is hereby authorized to act as a discretionary administrative or quasi-judicial body. When so acting it shall not sit as a legislative body but in a separate meeting and with separate minutes kept.

Before taking any action authorized in this section, the board of appeals or local legislative body shall give a hearing at which parties in interest and others shall have an opportunity to be heard. At least fifteen days' notice of the time and place of such hearing shall be published in an official publication of said municipality or in a newspaper of general circulation therein. Any such decision shall be subject to review by *certiorari* issued out of a court of record in the same manner and pursuant to the same provisions as in appeals from the decisions of a board of appeals upon zoning regulations.

C. Municipal Mapped-Streets Act [2]

By Alfred Bettman

AN ACT enabling municipalities to preserve the integrity of municipal plans by the regulation of buildings in mapped streets.

Sec. 1. Platting of Street Lines by Planning Commission. From and after the time when the planning commission of any municipality shall have adopted a master plan

standards or tests to be applied by the appeal board in determining whether or not to permit the erection of a building.

[1] In *Model Laws for Planning Cities, Counties, and States*, by Edward M. Bassett, Frank B. Williams, Alfred Bettman, and Robert Whitten, pp. 43–44. Cambridge, Harvard University Press, 1935. (Harvard City Planning Studies, VII.)

Footnotes have been omitted.

[2] *Op. cit.*, pp. 89–92. Footnotes in most cases have been omitted.

which includes at least a major street plan or shall have progressed in its master planning to the stage of the making and adoption of a major street plan, said commission shall have the power to make or cause to be made, from time to time, surveys for the exact locating of the lines of new, extended, widened, or narrowed streets in the whole or in any portion of the municipality, and to make and certify to council a plat or plats of the area or areas thus surveyed on which are indicated the locations of the lines recommended by the commission as the planned or mapped lines of future streets, street extensions, street widenings, or street narrowings. The making or certifying of a plat by the commission shall not in and of itself constitute or be deemed to constitute the opening or establishment of any street or the taking or acceptance of any land for street purposes.

Sec. 2. Establishment of Official Map. From and after the time when the planning commission of any municipality shall have adopted a master plan which includes a major street plan or shall have progressed in its master planning to the stage of the making and adoption of a major street plan, and shall have certified a copy of such major street plan to the council of the municipality, said council may establish an official map of the municipality showing the location of the streets of the whole or of any part or parts of the municipality theretofore existing and established by law as public streets. Such official map may also show the location of the lines of streets on plats of subdivisions which shall have been approved by the planning commission of the municipality. Such official map may also show the location of the lines of private streets on plats of subdivisions which, previous to the establishment of the official map, shall have been approved under and in accordance with the provisions of ——. Council shall certify the fact of the establishment of the official map to the recorder of the county in which such municipality is situated.

Sec. 3. Official Map: Additions and Changes. In the event that the official map established under section two of this Act does not include the whole of the municipality but only certain part or parts thereof, then the council of the municipality may add to the official map by placing thereon, from time to time, the lines of the streets which at the date of the establishment of the official map, existed and were established by law as public streets in other part or parts of the municipality or had been approved as streets, public or private, in such other part or parts of the municipality under the provisions of ——. Said council may also add to the official map by placing thereon, from time to time, the lines of streets in accordance with the plat of any subdivision which shall have been approved by the planning commission of the municipality. Said council may make, from time to time, other additions to or modifications of the official map by placing thereon the lines of planned new streets or street extensions, widenings, narrowings, or vacations; provided, however, that before taking any such action council shall hold a public hearing thereon, notice of the time and place of which shall be given not less than twenty days previous to the time fixed therefor by one publication in a newspaper of general circulation in the municipality or in the official gazette of the municipality and, in so far as their addresses appear in the municipal directory or on municipal records or are otherwise known to the clerk of the municipal council, by mail to the record owners of the lands on or abutting which the proposed street lines are located; and provided further that such proposed addition to or modification of the official map shall be submitted to the planning commission of the municipality for its approval, and, in the event of such commission's disapproval, such addition or modification shall require the favorable vote of not less than two

thirds of the entire membership of council. Any street line location certified by the planning commission to council, as authorized by section one of this Act, shall be deemed approved by the commission without further submission thereof to said commission. The placing of any street or street line upon the official map shall not in and of itself constitute or be deemed to constitute the opening or establishment of any street or the taking or acceptance of any land for street purposes.

SEC. 4. REGULATION OF BUILDINGS IN BED OF MAPPED STREETS. For the purpose of preserving the integrity of the official map, council may provide by general ordinance that no permit shall be issued for any building or structure or part thereof on any land located between the mapped lines of any street as shown on the official map. Any such ordinance shall provide that the board of zoning appeals, if the municipality have such a board, or if not, that a board of appeals created for the purpose in such ordinance, shall have the power, upon an appeal filed with it by the owner of any such land, to authorize the grant of a permit for a building or structure or part thereof within any such mapped-street location in any case in which such board finds, upon the evidence and arguments presented to it upon such appeal, (*a*) that the property of the appellant of which such mapped-street location forms a part will not yield a reasonable return to the owner unless such permit be granted, or (*b*) that, balancing the interest of the municipality in preserving the integrity of the official map and the interest of the owner in the use and benefits of his property, the grant of such permit is required by considerations of justice and equity. Before taking any such action, the board of appeals shall hold a hearing thereon, at least ten days' notice of the time and place of which shall be given to the appellant by mail at the address specified by the appellant in his appeal petition. In the event that the board of appeals decides to authorize a building permit, it shall have the power to specify the exact location, ground area, height, and other details and conditions of extent and character, and also the duration, of the building, structure, or part thereof to be permitted.

SEC. 5. MUNICIPAL IMPROVEMENTS IN STREETS: BUILDINGS NOT ON MAPPED STREETS. Excepting in streets existing and established by law as public streets at the date of the establishment of the official map, no public water facilities, sewer, or other public utility or improvement shall be constructed after said date in any street until such street is duly placed on the official map. Council may provide by general ordinance that no permit for the erection of any building shall be issued unless a street giving access to such proposed building existed and was established by law as a public street at the time of the establishment of the official map or shall have been duly placed on the official map in accordance with the provisions of sections two and three of this Act; provided, however, that such ordinance shall contain provision whereby the applicant for such permit may appeal to the board of zoning appeals or to the board of appeals created in the ordinance, hearing upon which appeal and notice of which shall be held and given as provided in section three of this Act, and such board shall have the authority to authorize a permit, subject to such conditions as the board may impose, where the circumstances of the case do not require the proposed building to be related to existing streets or to streets as shown on the official map and where the permit would not tend to distort or increase the difficulty of carrying out the official map or master plan of the municipality.

SEC. 6. DEFINITIONS. For the purposes of this Act, the term "street" or "streets" means, relates to, and includes streets, avenues, boulevards, roads, lanes, alleys, and other ways; "council" means the chief legislative body of the municipality whether designated

council, commission, board of aldermen, or by other title; and the term "municipality" or "municipal" includes and relates to cities, villages, and ——.[1] In the case of any municipality which, under the authority of section —— shall have designated a county or regional planning commission as its municipal planning commission, such county or regional planning commission shall be understood as being the "planning commission" referred to in this Act.

D. County and Regional Mapped-Roads Act[2]

By Alfred Bettman

AN ACT enabling counties to preserve the integrity of county or regional plans by the regulation of buildings in mapped roads in unincorporated areas.

Sec. 1. Platting of Road Lines by County or Regional Planning Commission. From and after the time when the county planning commission of any county or the regional planning commission of any region containing the whole or part of any county shall have adopted a master plan which includes at least a major road plan or shall have progressed in its master planning to the stage of the making and adoption of a major road plan, said planning commission shall have the power to make or cause to be made, from time to time, surveys for the exact locating of the lines of new, extended, widened, or narrowed roads in the whole or any part of the unincorporated portion of such county, and to make and certify to the board of county commissioners of said county a plat or plats of the area or areas so surveyed, on which are indicated the locations of the lines recommended by the commission as the planned or mapped lines of future roads, road extensions, road widenings, or road narrowings. The making or certifying of a plat by the commission shall not in and of itself constitute or be deemed to constitute the opening or establishment of any road or the taking or acceptance of any land for road purposes.

Sec. 2. Establishment of Official Map. From and after the time when the county planning commission of any county or the regional planning commission of any region containing the whole or part of any county shall have adopted a master plan which includes at least a major road plan or shall have progressed in its master planning to the stage of the making and adoption of a major road plan, and shall have certified a copy of such major road plan to the board of county commissioners of such county, said board of county commissioners may establish an official map of the unincorporated portion of said county, showing the location of the roads of the whole or of any part or parts thereof theretofore existing and established by law as public roads. Such official map may also show the location of the lines of roads on plats of subdivisions which shall have been approved by said county or regional planning commission previous to the establishment of the official map or on plats of subdivisions which shall have been approved by any municipal planning commission whose platting jurisdiction, as provided by ——, included such subdivisions. The board shall certify the fact of the establishment of an official map to the recorder of the county.

[1] To be filled in according to the types and classes of municipalities which the legislature intends to cover in this particular statute.

[2] *Op. cit.*, pp. 110–113. Footnotes in most cases have been omitted.

SEC. 3. OFFICIAL MAP: ADDITIONS AND CHANGES. In the event that the official map established under section two of this Act does not include the whole of the unincorporated portion of the county but only certain part or parts thereof, then the board of county commissioners may add to the official map by placing thereon, from time to time, the lines of roads which, at the date of the establishment of the official map, existed and were established by law as public roads in other part or parts of the unincorporated portion of the county. Said board of county commissioners may also add to the official map by placing thereon, from time to time, the lines of roads in accordance with the plat of any subdivision which shall have been approved by the county, regional, or municipal planning commission having statutory platting jurisdiction over such subdivision. Said board of county commissioners may make, from time to time, other additions to or modifications of the official map by placing thereon the lines of planned new roads or road extensions, widenings, narrowings, or vacations; provided, however, that before taking any such action said board of county commissioners shall hold a public hearing thereon, notice of the time and place of which shall be given not less than thirty days previous to the time fixed therefor by one publication in a newspaper of general circulation in the county, and, in so far as their addresses appear in any county directory or on county records or are otherwise known to the chief clerk of said board of county commissioners, by mail to the record owners of the land on or abutting which the proposed road lines are located; and provided further that such proposed addition to or modification of the official map shall be submitted, for approval or disapproval, to the county or regional planning commission which had made, adopted, and certified the major road plan as specified in section one of this Act, and, in the event of such commission's disapproval, such addition or modification shall require the favorable vote of not less than two thirds of the entire membership of said board of county commissioners. Any road-line location certified by the planning commission to the board of county commissioners, as authorized by section one of this Act, shall be deemed approved by such planning commission without further submission thereof to said commission. The placing of any road or road line upon the official map shall not in and of itself constitute or be deemed to constitute the opening or establishment of any road or the taking or acceptance of any land for road purposes.

SEC. 4. REGULATION OF BUILDINGS IN BED OF MAPPED ROADS. For the purpose of preserving the integrity of the official map, from and after the establishment thereof as authorized in section two of this Act, the board of county commissioners may, by general ordinance, prohibit the construction or erection of any building or structure or part thereof on any land located between the mapped lines of any road as shown on the official map. For the purpose of the enforcement of such prohibition, the said board may establish a system of building permits, under which the construction or erection of buildings and structures or parts thereof in the unincorporated portion of the county is prohibited without the issuance of building permits. Any such ordinance concerning buildings and structures in mapped roads shall, however, provide that the county board of zoning appeals, if the county have such a board, or, if not, that a board of appeals created for the purpose in such ordinance, shall have the power, upon an application or, in case of refusal of a building permit, upon an appeal filed with it by the owner of any such land, to authorize the construction or erection of a building or structure or part thereof within any such mapped-road location in any case in which such board of appeals finds, upon the evidence

and arguments presented to it upon such application or appeal, (*a*) that the property of the applicant or appellant of which such mapped-road location forms a part will not yield a reasonable return to the owner unless such construction or erection be authorized, or (*b*) that, balancing the interest of the county in preserving the integrity of its official map and the interest of the owner in the use and benefits of his property, such authorization is required by considerations of justice and equity. Before passing upon the application or appeal, the board of appeals shall hold a hearing thereon, at least ten days' notice of the time and place of which shall be given to the applicant or appellant by mail at the address specified by him in his application or appeal. In the event that the board of appeals decides to authorize the construction or erection of any building, structure, or part thereof on land located between the mapped lines of any road, it shall have the power to and shall specify the exact location, ground area, height, and other details and conditions of the extent and character, and also the duration, of the authorized building, structure, or part thereof.

Sec. 5. Penalties and Other Remedies for Unlawful Buildings. Whoever, being the owner, lessee, tenant, or otherwise in control of any land located between the mapped lines of any road as shown on an official map established by any board of county commissioners as authorized by this Act or on any change in or addition to such map, or whoever, being the agent of any such owner, lessee, tenant, or controller, erects or constructs upon such land any building or structure or part thereof contrary to or in violation of any provision of this Act or of any provision of an ordinance of any board of county commissioners enacted under the authority of this Act, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than fifty and not more than five hundred dollars. Each and every day during which such illegal building, structure, or part thereof continues shall be deemed a separate offense. The prosecuting attorney of any county in which any such violation occurs or is threatened, or any other county official designated by the county commissioners for the purpose, shall have the power, in the name of the county or in his own name, to bring injunction or any other appropriate form of action or proceeding to enjoin, abate, or remove any such building, structure, part, or the continuance thereof.

Sec. 6. Definitions. For the purposes of this Act, the term "road" or "roads" means, relates to, and includes roads, avenues, boulevards, streets, highways, parkways, lanes, and other ways or any part or parts thereof; "unincorporated" means situated outside of cities, villages, and ——,[1] so that when used in connection with "territory," "areas," or the like, it covers, includes, and relates to territory or areas which are not within the boundary of any city, village, or ——.[1]

[1] This blank is to be filled in or eliminated according to the types of municipalities in the state and the legislative determination as to the territory over whose official road mapping, of the character provided in this Act, the county board is to be granted jurisdiction.

APPENDIX III

EXCERPTS FROM STATE LEGISLATION

A. Police Power Provision of the California Constitution

Article XI

Sec. 11. Any county, city, town, or township may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws.

B. California Building Line Law of 1917 [1]

Sec. 1. Whenever public interest or convenience may require, the city council of any municipality shall have full power and authority to provide a procedure for the fixing and establishing of setback lines on private property bordering on the whole or part of any street, avenue or other highway, to prohibit the erection of buildings, fences or other structures between such setback lines and the lines of any such street, avenue or other highway, and to condemn any and all property necessary or convenient for that purpose.

C. California Planning Enabling Act [2]

An act to provide for the establishment of official master plans and the appointment of planning commissions in cities, cities and counties, and counties; prescribing the manner of adoption of such plans, portions thereof, amendments thereto and composition thereof; prescribing the powers and duties of such commissions; providing for the transfer thereto of the powers and duties of other planning commissions; providing for the preparation, adoption and recordation of precise street plans; providing for the control of the construction of buildings within the lines of streets shown on such precise street plans; providing for the levy of a special tax for the support of a planning commission and other acts pursuant to this act and making certain expenditures legal charges against the funds of cities, cities and counties, and counties and regional planning commissions; providing for the establishment by cities, cities and counties, and counties, of regional planning commissions, including two or more cities, cities and counties, or counties, or a portion or portions thereof, or both; making certain acts, misdemeanors; and repealing other acts in conflict herewith.

. . . . . .

Sec. 11. Whenever the city, city and county, or county, shall have established a planning commission pursuant to and in accordance with the provisions of this act and shall have adopted regulations governing subdivisions, which regulations thereafter have

[1] Statutes 1917, c. 735.
[2] Laws 1929, c. 838.

been officially adopted by ordinance by the governing body of said city, city and county, or county, such planning commission shall have such control over subdivisions as is granted to it by such regulations and by the statutes of the State of California.

SEC. 12. The city, city and county or county shall not improve, grade, pave or curb any street, or lay or authorize sewers or connections to be laid in any street or right of way within any territory for which a major traffic street plan shall have been adopted by the legislative body unless such street (*a*) shall have been accepted, opened or shall otherwise have received the legal status of a public street prior to the adoption of such plan; or (*b*) correspond with streets shown on the master plan; or (*c*) correspond with a street shown on a subdivision plat approved by the legislative body; or (*d*) corresponds with a street shown on a map theretofore approved by the planning commission; without first referring the matter to the planning commission for a report thereon. The commission shall be allowed thirty days within which to present a report and no action thereon shall be taken by the legislative body before the expiration of said thirty days unless a report be filed prior thereto by the planning commission.

SEC. 13. Upon the adoption by the legislative body of any city, city and county, or county of a major traffic street plan for such city, city and county, or county, or for any major section or district thereof, the planning commission of such city, city and county, or county shall from time to time prepare detailed and precised maps of the various streets indicated thereon as major streets, showing the location of the proposed future outside lines of such streets, and shall recommend the adoption of such precised maps and the establishment of the future street lines shown thereon, by the legislative body. Each of said maps shall be entitled "Precised map of (giving name) street" and shall have indicated thereon the fact that it shows the proposed future lines of such street and that it is proposed to recommend to the legislative body the adoption of the same and the establishment of the future street lines as shown thereon, pursuant to sections 13 and 14 of this act. In the preparation of such precised maps, the planning commission shall make or have made, a careful examination of all parcels of property, any part of which is included within the proposed future lines of such streets. Before recommending to the legislative body the adoption of any such precised street map and the establishment of the future street lines shown thereon, the commission shall hold at least two public hearings thereon, said hearings to be not less than thirty or more than sixty days apart. Notice of the time of the first of such hearings shall be given by one publication in a newspaper of general circulation in the municipality or county at least fifteen (15) days prior thereto. The commission shall cause a post-card notice of such hearing to be mailed, postage prepaid, to each of the owners of property, any part of which may be included within the proposed future lines of such street as shown on such precised map, at his last known address as the same appears on the current county assessment roll, at least fifteen (15) days prior to the date of the first of the said hearings. In the event that no address appears on the current county assessment roll for the owner of any such parcel of property, the post-card notice shall be addressed to general delivery. As to any parcels of property which may be assessed to unknown owners, no post-card notice need be mailed. The commission shall further cause notice of the hearing to be posted along the line of any street upon which it is proposed to establish such future street lines, at intervals of not less than five hundred feet, at least fifteen (15) days before the first of said hearings. In any of the notices hereinabove provided for, it shall be sufficient if the proposed future lines of such streets are described in

general terms and the maps in the office of the commission be referred to for all particulars; but each of such notices shall state that it is proposed to recommend the establishment of future street lines in accordance with sections 13 and 14 of this act. Copies of such precised street map shall be available in the offices or rooms of the commission for the use of any interested person, for at least fifteen (15) days immediately preceding the date of the first of said hearings. The commission may, in its discretion, cause to be prepared a sufficient number of copies of the precised street map, together with whatever explanation it may think proper, and may furnish any person inquiring for the same with a copy; *provided*, that the commission may by resolution provide that any person securing a copy thereof for his personal use shall be charged a sum not in excess of the cost of its preparation. The planning commission, after such public hearings, may recommend to the legislative body the adoption of such precised street plan and the adoption of the future street lines shown thereon, by resolution carried by the affirmative vote of not less than two-thirds of its entire membership, and shall thereupon certify the map and resolution to the legislative body. The legislative body, upon receipt of any such precised street map as recommended for adoption by the planning commission may, by ordinance, adopt the same and establish the future street lines shown thereon. Upon the adoption of any such precised street map by the legislative body and the establishment by ordinance of the future street lines shown thereon, the clerk of the legislative body shall certify upon such map the fact of and the date of its adoption and the fact that the same is adopted pursuant to the provisions of sections 13, 14, 14*a*, and 14*b* of this act, and shall, together with a certified copy of the ordinance adopting the same, file it for record with the recorder of the county in which the land shown on such precised map is located, and shall also file a copy thereof, together with said ordinance, with the building inspector or other administrative official having charge of the issuance of building permits in said city, city and county, or county.

SEC. 14. If any owner of property contained within the boundaries of any such future street lines or owning any interest therein, shall claim that the adoption of said precised street plan constitutes the taking of his property by the said city, city and county, or county, he shall, within three months from the date of filing such map in the county recorder's office, file notice of his claim with the clerk of the governing body thereof and record with the county recorder of the county in which said street is located a copy thereof showing filing of the original with the clerk of the governing body. In the event that said city, city and county, or county shall fail within three months after filing of the claim as aforesaid to acquire a limited easement over said property for the life of the said precised street plan, or to begin condemnation proceedings for the acquisition thereof, or to vacate by ordinance the precised street plan so far as it applies to claimant's property, then said precised street plans shall automatically be declared, so far as claimant's property is concerned to be vacated and he shall hold the same free from any claim under the provisions of this act for the control of said property. Said owner or claimant of an interest therein shall be entitled, upon demand, to a certificate from the clerk of the governing body of the city, city and county, or county, that said city, city and county, or county has failed to acquire such limited easement or begin condemnation proceedings as required by this section for the acquisition thereof, and said certificate duly filed in the office of the county recorder shall constitute conclusive evidence of the removal of any cloud on his title by virtue of the adoption of said precised street plan.

In the event that any owner of property lying within the boundaries of such precised street plans or any claimant of interest therein shall fail to file a claim as specified in this section, such owner or claimant shall be conclusively deemed to have waived any claim for damages by reason of the easement over and across his property or the property in which he claims an interest by virtue of said street plan except as hereinafter provided, but he shall not be deemed to have waived any title to the property within any precised street plan or any interest therein other than the right to erect or construct thereon a building without first complying with the provisions of section 14*a* of this act.

SEC. 14*a*. No person who has been compensated in accordance with the provisions of section 14 or who has waived his right to indemnity thereunder, shall erect or construct, or begin to erect or construct, any building capable of human habitation or use, fences and walls excluded, within the boundaries of any street shown on such precised street plan until three months after he has filed with the clerk of the governing body an affidavit setting forth his intention immediately to build thereon, the character of the proposed building, its estimated cost, the price at which he will convey to said city, city and county, or county a street easement over his property in accordance with the provisions of said precised street plan. He shall thereafter record a certified copy thereof showing the original to have been so filed in the office of the county recorder. The governing body may at any time within three months after the filing of such affidavit purchase or commence eminent domain proceedings for the acquisition of a street easement across said property in accordance with the provisions of said precised street plan. The cost of acquisition of said street easement may be made a part of the preliminary expenses of any acquisition of the entire street as shown on said precised street plan by a subsequent special assessment proceeding and in said case out of the fund obtained from the special assessment proceedings, if provided by the resolution of intention therein, there shall be returned to the revolving fund established by section 14*b* of this act, the cost of acquisition of the street easement over said particular parcel.

If the city, city and county, or county, fails to purchase or commence eminent domain proceedings for the acquisition of such a street easement across the parcel of said claimant within the time above stated, or such shorter time when the governing body has given formal notice of its intention not to secure such easement at said time, copy of such notice, property [*sic*] attested, to be recorded in the office of the county recorder, then the owner thereof may construct such building free from any claim of the city, city and county, or county, to control the use of said property by reason of the adoption of the precised street plan under the provisions of this act.

No damage shall hereafter be awarded in any eminent domain proceedings for the taking of or damage to any structure located within the right of way shown upon such precised street plan by reason of the carrying out of the proposed public improvement shown upon such a precised street plan where the owner of any parcel contained therein has failed to file the affidavit or failed to wait thereafter the prescribed time, or in excess of the amount of damage which would have been awarded had the structure built been fairly included within that set forth in the description contained in the affidavit filed by such person; *provided, however,* that nothing contained herein shall be construed to prevent an owner from filing subsequent and different affidavits and offers when his plan[s] for the proposed structure are changed, said additional affidavits and offers to be subject to all provisions of this section.

From and after the filing for record of any precised street plan no permit shall be issued for the construction of any building or structure or any part thereof; fences and walls excluded on any part of the land right [*sic*] between the future lines of any street shown on such precised street plan until the applicant therefor can demonstrate to the body issuing such permits that such property has been released from the effects of said precised street plan under the provisions of section 14 or this section of this act.

Sec. 14*b*. Any city, city and county, or county, is hereby authorized to levy a tax of not to exceed two mills per dollar of assessed valuation for the purpose of creating a revolving fund for the purpose of compensating property owners under the provisions of sections 14 and 14*a* of this act, and are further authorized to expend any and all unappropriated funds of said city, city and county, or county for the purposes set forth in said sections. Any compensation paid under sections 14 or 14*a* of this act may, in the discretion of the governing body of the city, city and county, or county, be made a charge against any special assessment district later established for the purpose of acquiring a street easement in accordance with the provisions of such precised street plan. In the event that such compensation is made a charge against any special assessment district, the proceeds derived from such special assessment district to compensate the city, city and county, or county therefor shall be paid into the special fund created by such tax if originally paid therefrom, or such other fund as it may in the first instance have been paid from.

. . . . . .

Sec. 16. The powers and duties of any such regional planning commission[1] shall be identical with the same matters as provided for city and county planning commissions in this act, unless otherwise provided for herein. Such commission shall have exclusive jurisdiction concerning all planning matters as set forth in this act for all unincorporated territory embraced within said district, including subdivision control, hearings and recommendations upon zoning matters, and the preparation of a master plan, except that the petition calling for the creation of said district may set forth a limitation of the matters to be undertaken by said regional planning commissions, and in such case the said powers and duties shall include only those matters set forth in said petition; *and further*, said petition may provide that said regional planning commission shall have the power to make investigations and reports upon certain specified matters within incorporated cities, and in such case said commission shall have such power. All reports and recommendations dealing with planning matters in unincorporated territories shall be submitted by said commission to the board of supervisors for the county within which are situated the matters reported upon. In case the regional planning commission is authorized to make any studies and reports concerning areas within incorporated cities, such reports shall be transmitted by said regional planning commission to the city planning commission for said city, if such city planning commission exists. If there be no such city planning commission, the regional planning commission may make its report directly to the governing body of said city.

[1] Sec. 15 provides for the appointment of regional planning commissions. — Ed.

D. Connecticut Town Planning Enabling Act [1]

Sec. 405. Duties. Such [planning] commission may authorize the preparation of surveys, maps or plans showing proposed locations or relocations of any public building, highway, street, sidewalk or parkway, or improvement thereof, and of building and veranda lines, and may obtain expert advice, provided the members of such commission who shall vote in favor of such plans shall be personally acquainted with such location. No highway, street, sidewalk or parkway shall be laid out, opened, accepted, located or relocated, and no building or veranda line shall be established in any such town until the proposed location thereof shall be approved and shown on a map or plan as provided in this chapter.

Sec. 406.[2] Powers. Such commission is authorized to file any map or plan of any proposed highway, street, sidewalk or parkway, or of any building or veranda line prepared as herein provided, in the office of the town clerk of such town, provided such map or plan after completion shall have been approved at a meeting of the commission called for the purpose. Such map or plan shall have inscribed thereon the following: "Recommended by town plan commission" and shall bear the date of such recommendation and be signed by the chairman. Such commission shall, upon the filing of any such map or plan, give notice to each record owner of land included in such map or plan, by mail and by advertisement in a daily newspaper having a circulation in such town, of such filing and of the place within such town where, and the time, not less than ten days after such mailing and publication, when, such commission will hear any person claiming to be affected thereby. Such commission, after such hearing, may approve and adopt such map or plan, and may make assessments of benefits accruing to and damages sustained by any person owning land included in such map or plan, and any assessments of benefits so made shall constitute a lien against the property affected, which lien shall take precedence of all other incumbrances except taxes and other municipal liens or incumbrances of earlier date. Such liens may be continued by filing with the town clerk for record in the land records of such town, within ninety days after such assessment shall have been made and notice thereof given to the person or persons affected thereby, a certificate of such lien signed by the secretary of such commission. Collection of the amount secured by any such lien, with interest at the statutory rate for interest on unpaid taxes beginning thirty days after the completion of the work or improvement by the board of selectmen, may be enforced in the same manner as is provided for the enforcement of tax liens. Said board shall give written notice to the tax collector of the date of completion of such work or improvement. Such commission may change any map or plan so made and filed by it, at such time and in such manner as it shall deem necessary, and shall thereupon file a map or plan of such change, inscribed as hereinbefore provided, with the town clerk of such town. Notice by mail of such change shall be given by such commission to each record owner of land affected thereby and by advertisement as in the first instance, and the subsequent proceedings shall be as provided in the case of an original filing.

Sec. 407. Appeal. Any person affected may appeal from the action of said commission within thirty days after notice to him of the adoption of a map or plan or the assessment of benefits or damages and any interested party may join in such appeal. Separate

[1] Gen. Stats. (1930), c. 26.

[2] As amended by Pub. Acts 1931, c. 26, § 38*a*.

appeals relating to the same map or plan or assessments arising out of the same subject-matter may be heard as one cause. Such appeal shall be taken to the superior court for the county in which such town is located and shall be served and returned as process in other civil actions. Said court may, by committee or otherwise, re-assess such damages or benefits, and review, revoke, modify or affirm any act of such commission, and, if such damages shall be increased or such benefits reduced or such act revoked, award costs against the town, otherwise against the appellant or appellants; and may issue execution accordingly.

SEC. 408. POWERS OVER PRIVATE LANDS. Any owner of land in such town may apply to such commission to establish locations for highways, streets, sidewalks or parkways and building or veranda lines upon his land and shall submit therewith a map or plan of the proposed locations thereof, and such commission may adopt or disapprove the same with or without public notice and hearing thereon as it may deem advisable. If such commission, within sixty days after receiving such application, with such map or plan, shall fail to act upon the same, such applicant may lay out and open highways, streets, sidewalks or parkways, and may establish building or veranda lines as shown on such map or plan, and shall file a duplicate of such map or plan in the office of the town clerk of said town.

SEC. 409. APPROPRIATIONS. VALIDITY OF ACTS. Any town having raised such commission shall make such appropriation for its expenses as the town shall deem necessary, but not to exceed the amount recommended for the purpose by its board of finance if there be one in such town. No action taken or vote passed by said commission upon any of the foregoing subjects shall be valid unless it shall have been favored by a majority of its entire membership at a meeting called for the purpose.

E. CHARTER OF HARTFORD, CONN.[1]

SEC. 158. Powers of common council, highways, building lines, openings, low grounds sewers, and sidewalks, etc.

All the powers, duties, and liabilities of the town of Hartford respecting highways, private ways, and bridges are hereby transferred to and imposed upon the city of Hartford. The court of common council of the city of Hartford shall have exclusive power to lay out, make, and establish within said city new highways, streets, . . . whenever they deem it for the public good to do so, or to alter the lines and location of those already laid out and discontinue the same, . . . to establish building lines on the land of proprietors adjoining any street, highway, alley, park, or walk, within said city, between which and such street, highway, alley, park, or walk, no building or part of a building or appurtenance thereof shall be set up or erected.

F. EXTRACTS FROM MASSACHUSETTS LAWS[2]

Chapter 41

SEC. 74. After the establishment of a board of survey [as provided in Section 73] no person shall open a private way for public use without first submitting to said board

[1] The Compiled Charter of the City of Hartford, 1931. Chap. XIII, § 158, p. 122. (Conn. Special Laws 1865, c. 718, as amended 1867, 1895, and 1905.)

[2] Gen. Laws, Tercentenary edition (1932), vol. I.

suitable plans thereof in accordance with such rules and regulations as the board may prescribe. In cities such plans shall be so prepared as to show the profiles of such way and the method of drainage of the adjacent or contiguous territory. Upon the receipt of said plans, with a petition for their approval, the board shall give a public hearing thereon, after giving notice of the same by publication once in each of two successive weeks in a newspaper published in the city or town, the last publication to be at least two days before the hearing; and after the hearing, the board may alter such plans, and may determine where such ways shall be located and the width and grades thereof, and shall indicate any modifications on said plans. The plans as approved or modified by the board shall then be signed by the board, and in cities shall be filed in the office of the city engineer, and in towns in the office of the town clerk; and the officer with whom they are filed shall attest thereon the date of filing; and thereafter no way in the territory to which the plans relate shall be laid out or constructed except in accordance therewith, or with further plans subsequently approved by the board.

Sec. 75. The board of survey may, and in cities, upon the vote of the planning board and city council, shall, from time to time cause plans to be made of such territory or sections of lands in the city or town as the board of survey or the planning board may deem necessary, showing thereon the location of such ways, whether already laid out or not, as, in the opinion of the board, the interest of the public may or will require in such territory, showing clearly the direction, width and grades of each way, and in cities a plan of drainage, and said board may incur such expenses as it may deem necessary therefor, not exceeding the amount appropriated for the purpose. . . . Before causing such plans to be made, the board shall give a public hearing thereon, which shall be advertised in the manner prescribed in the preceding section, and shall, after the making of any such plan, give a hearing thereon, advertised in like manner, and keep the plan open to public inspection for one month after the first advertisement of the hearing. After the hearing, and after any alterations deemed necessary by said board have been made, the same shall be approved, signed, marked, filed and attested as provided in respect to the plans mentioned in the preceding section.

. . . . . .

Sec. 80. A town which accepts Section seventy-three [providing for establishment of a Board of Survey] or has accepted corresponding provisions of earlier laws or has accepted any special act authorizing the creation of a board of survey therein may establish, in the manner provided for the laying out of town ways, the exterior lines of any way, the plan of which is approved under section seventy-four or seventy-five or under such special act; and thereafter no structure shall be erected or maintained between the exterior lines of the way so established, except that buildings or parts of buildings existing at the time of the establishment of said lines may remain and be maintained to such extent and under such conditions as may be prescribed by the board of survey of such town. Lines established under this section may be discontinued in the manner provided for the discontinuance of a highway or a town way. This section shall not apply to cities.

Sec. 81. . . . Any person injured in his property as aforesaid or by the establishment or discontinuance of exterior lines under section eighty may recover the damages so caused under chapter seventy-nine.

Chapter 82

SEC. 37. If a city by its city council or a town accepts this section or has accepted corresponding provisions of earlier laws, a building line not more than forty feet distant from the exterior line of a highway or town way may be established in the manner provided for laying out ways, and thereafter no structures shall be erected or maintained between such building line and such way, except steps, windows, porticos, other usual projections appurtenant to the front wall of a building, embankments, walls, fences and gates, to the extent prescribed in the vote establishing such building line, and except that any structure existing at the time of the establishment of the building line may be permitted to remain and to be maintained to such extent and under such conditions as may be prescribed in the vote establishing such building line. Whoever sustains damage thereby may recover the same under chapter seventy-nine. A building line established under this section may be discontinued in the manner provided for the discontinuance of a highway or town way. Whoever sustains damages by the discontinuance of a building line may recover the same under chapter seventy-nine.

Chapter 143

SEC. 3. Every city, except Boston, and every town which accepts this section or has accepted corresponding provisions of earlier laws may, for the prevention of fire and the preservation of life, health and morals, by ordinances or by-laws consistent with law and applicable throughout the whole or any defined part of its territory, regulate the inspection, materials, construction, alteration, repair, height, area, location and use of buildings and other structures within its limits . . . and may prescribe penalties not exceeding one hundred dollars for every violation of such ordinances or by-laws.

G. NEW JERSEY BUILDING LINE LAW [1]

AN ACT respecting the establishment of building lines in municipalities in this State.

1. The word "street," used in this act, means any public street, avenue, highway, esplanade, boulevard, parkway or square, or any part, or side, or part of the side of any of the same.

2. In addition to any power now vested in any board or body having control of the streets and highways of any municipality in this State, said board or body shall have power and authority to establish . . . building lines on any street, or part thereof, in said municipality, and thereafter no new building, structure or part thereof shall be erected between such building line and the street[;] such ordinance may also fix the time after which no structure, building or part thereof whatever shall continue to stand between said building line and the street. The re-erection, reconstruction, and repair of any existing building or structure, or the erection of any temporary structure situate between the building line and the street, may be permitted before the time fixed as aforesaid, upon such terms and conditions as may be prescribed in such ordinance by said municipality; *provided, however*, such ordinance may establish a different building line for porches or bay windows from the line established for the remaining portions of the building. [The law goes on to provide for the making of a map showing the proposed building line and for the holding of public hearings, the assessment of benefits, the payment of damages, etc.]

[1] Laws 1917, c. 215, as amended by Laws 1920, c. 137, and Laws 1922, c. 238.

H. New Jersey Planning Enabling Law [1]

AN ACT enabling municipalities other than counties to authorize the preparation, adoption, regulation and enforcement of master plans, official maps and subdivision plats for municipal planning purposes; and to appoint planning boards with specified powers and duties; and providing penalties for violations of this act and repealing sundry planning laws.

. . . . . .

5. General Powers and Duties of the Planning Board. It shall be the function and duty of the planning board to make and adopt a master plan for the physical development of the municipality, including any areas outside of its boundaries which, in the board's judgment, bear essential relation to the planning of such municipality. Such plan, with the accompanying maps, charts, drawings and descriptive matter, shall show the board's recommendations for the development of said territory, including among other things the general location, character and extent of streets, subways, bridges, waterways, water fronts, parkways, playgrounds, squares, parks, aviation fields, and other ways, grounds and open spaces, the general location of public buildings and other public property, and the general location and extent of major public utility and terminal facilities, whether publicly or privately owned, also general plans for the removal, relocation, widening, narrowing, vacating, abandonment, change of use or extension of any of the foregoing ways, grounds, open spaces, buildings, property, utilities or terminals. As the work of making the whole master plan progresses, the board may from time to time adopt and publish a part or parts thereof, any such part to cover one or more major sections or divisions of the municipality or one or more of the aforesaid or other functional matters to be included in the plan. The board may from time to time amend, extend or add to the plan. In the preparation of the aforesaid master plan the planning board shall give due consideration to the probable ability of the municipality to carry out, over a period of years, the various projects embraced in the plan without the imposition of unreasonable financial burdens. The board may be given the additional authority and duty of acting as the zoning commission under the full authority of an act entitled "An act to enable municipalities to adopt zoning ordinances limiting and restricting to specified districts and regulating therein buildings and structures, according to their construction, and the nature and extent of their use, and the repeal of sundry zoning laws," adopted April third, one thousand nine hundred and twenty-eight.

6. Effect of Adoption of Master Plan. Whenever the planning board shall have adopted the master plan, or any part thereof, no street, square, park or public way, ground or open space, or public building or structure, or major public utility, whether publicly or privately owned, shall be constructed or authorized in the municipality, or in such part thereof as is shown in said master plan as adopted, until the location, character and extent thereof has been submitted to the planning board for approval. The planning board shall, as soon as conveniently possible, report in writing to the governing body its action thereon, and in the case of disapproval its reasons therefor; whereupon the governing body shall have power to overrule such disapproval by a recorded vote of not less than two-thirds of its entire membership. The failure of the planning

[1] Laws 1930, c. 235.

board to act on matters referred to it pursuant to this section, within forty-five days from and after the date of official submission of said matter to it, shall be deemed approval.

7. Powers and Duties of Governing Body. Any municipality may by ordinance establish the master plan as created hereinunder, either in whole or in part, as the official map of said municipality. Such official map or any part of it, as and when established by ordinance, and subject to amendments as hereinafter provided, is to be deemed official and conclusive with respect to the location and width of streets, highways and parkways and the location and extent of public parks and playgrounds shown thereon, and such official map is hereby declared to be established to conserve and promote the public health, safety, morals and general welfare.

8. Official Map Changes. The governing body is authorized and empowered, whenever and as often as it may deem it for the public interest, by ordinance to change or add to the hereinbefore authorized official map of the municipality. Before making such change or addition, the matter shall be referred to the planning board for its recommendation thereon. If the planning board shall not make its recommendation thereon within forty-five days after such reference, said planning board shall be deemed to consent thereto. Upon the receipt of the recommendation of the planning board, or upon the expiration of forty-five days after reference thereto is made to said planning board, the governing body shall hold a public hearing on the proposed change in or addition to the official map and shall cause notice of such hearing to be published in the official newspaper of the municipality or in a newspaper of general circulation in the municipality, at least ten days prior to such hearing. At such public hearing, when held, all interested parties shall be afforded an opportunity to present their views, prior to the final vote upon said ordinance providing for such change in or addition to the official map. Said ordinance, if contrary to the recommendation of the planning board, shall be adopted only upon the affirmative vote of at least two-thirds of the members of the governing body. Upon the final passage of such ordinance, such changes or additions shall become a part of the official map of the municipality and shall be deemed to be final and conclusive with respect to the location and extent of streets, highways, parkways, playgrounds and parks, except that further changes and additions may later be made in the manner provided in this section. The approval by the municipality under the provisions of laws, other than those contained in this section, of the layout, widening or closing of any public way or area designated above as part of the official map shall be deemed to be a change or addition to the official map and shall be subject to all the provisions of this section.

9. Purposes in View. In the preparation of such plan and map the planning board shall cause to be made careful and comprehensive surveys and studies of present conditions and future growth of the municipality, due regard being taken to its relation to neighboring territory. The plan and map shall be made with the general purpose of guiding and accomplishing a co-ordinated, adjusted and harmonious development of the municipality and its environs which will, in accordance with present and future needs, best promote health, safety, morals, order, convenience, prosperity and general welfare, as well as efficiency and economy in the process of development; including, among other things, adequate provision for traffic and recreation, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the promotion of good civic design and arrangement,

wise and efficient expenditure of public funds, and the adequate provision of public utilities and other public requirements.

10. Planning Board Reports on Matters Referred to It. Such governing body may by ordinance provide for the reference of any other matter or class of matters to the planning board before final action thereon by the public body or officer of said municipality having final authority thereon, with or without the provision that final action thereon shall not be taken until said planning board has submitted its report thereon or has had a reasonable time to submit its report, which time is to be fixed by said ordinance.

11. Approval of Plats. The governing body may by ordinance authorize and empower the planning board to adopt regulations governing the subdivision of land within its jurisdiction and to approve plats showing new streets or highways and to determine and fix the minimum sizes of lots and to establish building lines, except when already established by the zoning ordinance. Before action is taken, a hearing after notice shall be given by the planning board to all parties in interest. The planning board may thereupon approve, modify and approve, or disapprove such plat, taking due regard to its conformity with the official map. The planning board shall take the action required by this section and report its action to the governing body within thirty days from and after the date of the submission of the plat to it for approval, or within such further time as may by resolution of the governing body be granted; otherwise such plat shall be deemed to have been approved, and the certificate of the clerk of such municipality as to the date of the submission of the plat for approval to the planning board and of the failure of said board to report action thereon within thirty days or such further time as allowed by the governing body, shall be issued on demand of the owner or his agent and shall be sufficient, in lieu of the written endorsement or other evidence of approval herein required. The grounds of disapproval of any plat submitted to the planning board shall be stated upon the records of such board.

12. Approval of Plats — Additional Requisites. Such plat submitted for the approval of the planning board may also, in proper cases, show a park or parks suitably located for playground or other recreation purposes. In approving such plats, the planning board shall require that the streets, highways and parkways shall be of sufficient width and suitably located to accommodate the prospective traffic and to afford adequate light, air and access for fire-fighting equipment to buildings and be coördinated so as to compose a convenient system; that the land shown on such plats shall be so planned as to be capable of being provided with proper sanitary and drainage conditions; and that the parks and playgrounds shall be of reasonable size for neighborhood playgrounds or other recreational uses when deemed necessary. In making such determination regarding streets, highways, parkways, playgrounds, squares, parks and other ways, grounds and open spaces, the planning board shall take into consideration the prospective character of the development, whether residence, business or industrial.

13. Record of Plats. No plat of a subdivision of land showing a new street or highway shall be accepted for filing by the county clerk or register of deeds, wherever such office exists in any of the several counties of this State, until it has been approved by the planning board, if it has been empowered to approved [*sic*] such plats, or by the municipal governing body, and such approval be endorsed in writing on the plat in such manner as the planning board or governing body may designate. After such plat is approved and filed, the streets, highways, parkways, playgrounds and parks shown on such plat shall be and

become a part of the official map and master plan of the municipality. The owner of the land or his agent who files the plat may add on the plat a notation, if he so desires, to the effect that no offer of dedication of such streets, highways, parkways, playgrounds or parks or any of them is thereby made to the public.

In so far as provisions of law other than those contained in this act require the approval of a plat, map or plan of land by any officer or body of a municipality as a prerequisite to its acceptance for filing by the county clerk or register of deeds, wherever such office exists, in any of the several counties of this State, said provisions of such other laws shall not be in force in so far as they apply to plats, maps or plans of land within the limits of any municipality which has established an official map or master plan under this act.

14. Penalties for Transferring Lots in Unapproved Subdivisions. Whoever, being the owner or agent of the owner of any land located within a subdivision controlled under sections eleven and twelve of this act, transfers or sells any land by reference to or exhibition of or by other use of a plat of a subdivision, before such plat has been approved by the planning board and duly recorded or filed in the office of the county clerk or register of deeds, if any, of the county where said plat is located, shall forfeit and pay a penalty of not less than one hundred dollars for each lot or parcel so transferred or sold, and the description of such lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties or from the remedies herein provided. The municipal corporation may enjoin such transfer or sale or agreement by action for injunction brought in any court of equity jurisdiction or may recover the said penalty by a civil action in any court of competent jurisdiction.

15. Permits for Buildings in the Bed of Mapped Streets. For the purpose of preserving the integrity of the official map of a municipality, no permit shall hereafter be issued for any building in the bed of any street, shown or laid out on such official map; *provided, however*, that if the property of the applicant of which such reserved location forms a part, cannot yield a reasonable return to the owner unless such permit be granted, the board of adjustment, in any municipality which has established such a board, shall have power in a specific case by the vote of a majority of its members to grant a permit for a building in such a street, which will as little as practicable increase the cost of opening such street, or tend to cause a change of such official map, and such board shall impose reasonable requirements as a condition of granting such permit which requirements shall be designed to promote the health, morals, safety and general welfare of the public and shall inure to the benefit of the municipality. In any municipality in which there is no board of adjustment, the municipal governing body shall have the same powers and be subject to the same restrictions as provided in this section. Before taking any action authorized in this section, the board of adjustment or governing body shall give a public hearing at which parties in interest and others shall have an opportunity to be heard. At least ten days' notice of the time and place of such hearing shall be published in an official publication of said municipality or in a newspaper of general circulation therein.

16. Municipal Improvements in Streets. No public sewer, water mains or other municipal street utility or improvement shall be constructed in or so as to serve any street, highway, parkway, playground or park until such street, highway, parkway, playground or park is duly placed on the official map or master plan.

17. Buildings Not on Mapped Streets. No permit for the erection of any building shall be issued unless a street or highway giving access to such proposed structure has been duly placed on the official map or master plan. Where the enforcement of the provision of this section would entail practical difficulty or unnecessary hardship, and where the circumstances of the case do not require the structure to be related to existing or proposed streets or highways, the applicant for such a permit may appeal from the decision of the administrative officer having charge of the issuance of permits to the board of adjustment in any municipality which has established such a board, or in municipalities where there is no board of adjustment, the appeal may be made to the governing body, and the same provisions are hereby applied to such appeals and to such board as are provided in cases of appeals on zoning regulations. The board may, in passing on such appeal, make any reasonable exception and issue the permit subject to conditions that will protect any street or highway layout.

18. Planning Board — Changes in Zoning Regulations. Simultaneously with the approval of any plat controlled under sections eleven and twelve of this act, the planning board shall by resolution either confirm the zoning regulations of the land so platted as shown on the official zoning maps of the municipality or make recommendations for any reasonable change therein to the governing body. The owner of the land shown on the plat may submit with the plat a proposed building plan indicating lots where group houses for residence or apartment houses or local stores and shops are proposed to be built. Such building plan shall indicate for each lot or proposed building unit the maximum density of population that may exist thereon or therein and the maximum height and the minimum yard and court requirements. Such plan, if not conformable to the zoning regulations of the land shown on the plat shall not receive final approval of the planning board unless and until the governing body has acted favorably on the recommended zoning changes in the manner prescribed by law. Such building plan shall not be approved by the planning board unless in its judgment the appropriate use of adjoining land is reasonably safeguarded and such plan is consistent with the public welfare.

Simultaneously with placing on the official map any proposed new street, or proposed change in an existing street, the planning board shall make recommendations to the governing body for any reasonable amendment to the zoning map or ordinance of the municipality, to provide for proper setback lines and for other restrictions and regulations of buildings and structures according to their construction and the nature and extent of their use on property to be affected by said street.

I. New York Planning Enabling Law for Cities[1]

Sec. 1. Chapter twenty-six of the laws of nineteen hundred and nine, entitled "An act in relation to cities, constituting chapter twenty-one of the consolidated laws," is hereby amended by adding thereto a new article, to be article three, to read as follows:

Article 3

[1] Laws 1926, c. 690.

28. Planning board, officers, employees and expenses.
29. Official map, changes.
30. Planning board, reports on matters referred to it.
31. Planning board, general reports.
32. Approval of plats.
33. Approval of plats, additional requisites.
34. Record of plats.
35. Permits for buildings in bed of mapped streets.
36. Municipal improvements in streets; buildings not on mapped streets.
37. Planning board, changes in zoning regulations.
38. Court Review.

SEC. 26. OFFICIAL MAP, ESTABLISHMENT. Every city by ordinance or resolution of the legislative body which has the authority to lay out, adopt and establish streets, highways and parks may establish an official map or plan of the city showing the streets, highways and parks theretofore laid out, adopted and established by law, and such map or plan is to be deemed to be final and conclusive with respect to the location and width of streets and highways and the location of parks shown thereon. Such official map or plan is hereby declared to be established to conserve and promote the public health, safety and general welfare. Said ordinance or resolution shall make it the duty of some appropriate official or employe of said city at once to file with the clerk or register of the county or counties in which said city is situated a certificate showing that the city has established an official map or plan.

SEC. 27. PLANNING BOARD, CREATION AND APPOINTMENT. Such legislative body of each city is hereby authorized and empowered to create by resolution or ordinance a planning board of five members to be appointed by the mayor with authority to remove any member of such board for cause and after public hearing. Of the members of the board first appointed, one shall hold office for the term of one year, one for the term of two years, one for the term of three years, one for the term of four years, one for the term of five years, from and after his appointment. Their successors shall be appointed for the term of five years from and after the expiration of the term of their predecessors in office. If a vacancy shall occur otherwise than by expiration of term, it shall be filled by appointment for the unexpired term. In any city in which there is a planning commission created in accordance with article twelve-a of the general municipal law the ordinance or resolution instead of providing for the appointment of a new planning commission or board may provide that the existing commission shall continue, the members thereof thereafter to be appointed in accordance with the provisions of said article twelve-a, with the powers and duties as specified for a planning board appointed as provided in this article in addition to the powers and duties as specified in said article twelve-a; provided, however, that in any such city section two hundred and thirty-eight of the general municipal law shall not be in force.

SEC. 28. PLANNING BOARD, OFFICERS, EMPLOYEES AND EXPENSES. The mayor shall designate the member of said planning board to act as chairman thereof; or on his failure so to do, the planning board shall elect a chairman from its own members. It shall have the power and authority to employ experts and a staff, and to pay for their services and such other expenses as may be necessary and proper, not exceeding, in all, the appro-

priation that may be made for such board. Each city is hereby authorized and empowered to make such appropriation as it may see fit for such expenses, such appropriation to be made by those officers or bodies having charge of the appropriation of the public funds.

SEC. 29. OFFICIAL MAP, CHANGES. Such legislative body is authorized and empowered, whenever and as often as it may deem it for the public interest, to change or add to the official map or plan of the city so as to lay out new streets, highways or parks, or to widen or close existing streets, highways, or parks. At least ten days' notice of a public hearing on any proposed action with reference to such change in the official map or plan shall be published in an official publication of said city or in a newspaper of general circulation therein. Before making such addition or change the matter shall be referred to the planning board for report thereon, but if the planning board shall not make its report within thirty days of such reference, it shall forfeit the right further to suspend action. Such additions and changes when adopted shall become a part of the official map or plan of the city, and shall be deemed to be final and conclusive with respect to the location of the streets, highways and parks shown thereon.

The layout, widening or closing, or the approval of the layout, widening or closing of streets, highways or parks by the city under provisions of law other than those contained in this article shall be deemed to be a change or addition to the official map or plan, and shall be subject to all the provisions of this article.

SEC. 30. PLANNING BOARD, REPORTS ON MATTERS REFERRED TO IT. The body creating such planning board may by general or special rule provide for the reference of any matter or class of matters to the planning board before final action thereon by the public body or officer of said city having final authority thereon with or without the provision that final action thereon shall not be taken until said planning board has submitted its report thereon or has had a reasonable time to be fixed in said rule to submit the report.

SEC. 31. PLANNING BOARD, GENERAL REPORTS. The planning board shall have full power and authority to make such investigations, maps and reports and recommendations in connection therewith relating to the planning and development of the city as to it seems desirable providing the total expenditures of said board shall not exceed the appropriation for its expenses.

SEC. 32. APPROVAL OF PLATS. The body creating such planning board may by ordinance or resolution authorize and empower the planning board to approve plats showing new streets or highways. Before such approval is given, a public hearing shall be held by the planning board which hearing shall be advertised in an official paper or in a newspaper of general circulation in said city at least ten days before such hearing. The planning board may thereupon approve, modify and approve, or disapprove such plat. The approval required by this section or the refusal to approve shall take place within forty-five days from and after the time of the submission of the plat for approval; otherwise such plat shall be deemed to have been approved, and the certificate of such city as to the date of the submission of the plat for approval and the failure to take action thereon within such time, shall be issued on demand and shall be sufficient in lieu of the written endorsement or other evidence of approval herein required. The ground of refusal of approval of any plat submitted shall be stated upon the records of such planning board.

The ordinance or resolution authorizing the planning board to approve plats shall make it the duty of some appropriate official or employee of said city to file with the clerk or register of the county or counties in which said city is situated a certificate showing that

said planning board has been so authorized and shall specify the officer or employee of said city who shall issue in its behalf the certificate of failure to take action as aforesaid.

SEC. 33. APPROVAL OF PLATS, ADDITIONAL REQUISITES. Before the approval by the planning board of a plat showing a new street or highway, such plat shall also in proper cases show a park or parks suitably located for playground or other recreation purposes. In approving such plats the planning board shall require that the streets and highways shall be of sufficient width and suitably located to accommodate the prospective traffic and to afford adequate light, air and access of fire-fighting equipment to buildings, and to be coordinated so as to compose a convenient system; that the land shown on such plats shall be provided with proper sanitary and drainage conditions; and that the parks shall be of reasonable size for neighborhood playgrounds or other recreation uses. In making such determination regarding streets, highways and parks the planning board shall take into consideration the prospective character of the development, whether dense residence, open residence, business or industrial.

SEC. 34. RECORD OF PLATS. No plat of a subdivision of land showing a new street or highway shall be filed or recorded in the office of the county clerk or registrar until it has been approved by a planning board which has been empowered to approve such plats, and such approval be endorsed in writing on the plat in such manner as the planning board may designate. After such plat is approved and filed, subject, however, to review by court as hereinafter provided, the streets, highways and parks shown on such plat shall be and become a part of the official map or plan of the city. The owner of the land or his agent who files the plat may add as part of the plat a notation if he so desires to the effect that no offer of dedication of such street, highways, or parks or any of them is made to the public.

In so far as provisions of law, other than those contained in this article, require the approval of a plat, map or plan of land by the authority of the city, as a prerequisite of its record, or allow it to be recorded on failure of the city to approve or disapprove of the same within a given time, said provisions shall not be in force in so far as they apply to plats, maps or plans of land within the limits of any city which has established an official map or plan and authorized a planning board appointed by it to approve plats of land within said city showing new streets and highways, under this article.

SEC. 35. PERMITS FOR BUILDING IN BED OF MAPPED STREETS. For the purpose of preserving the integrity of such official map or plan no permit shall hereafter be issued for any building in the bed of any street or highway shown or laid out on such map or plan, provided, however, that if the land within such mapped street or highway is not yielding a fair return on its value to the owner, the board of appeals or other similar board in any city which has established such a board having power to make variances or exception in zoning regulations shall have power in a specific case by the vote of a majority of its members to grant a permit for a building in such street or highway which will as little as practicable increase the cost of opening such street or highway, or tend to cause a change of such official map or plan, and such board may impose reasonable requirements as a condition of granting such permit, which requirements shall inure to the benefit of the city. Before taking any action authorized in this section, the board of appeals or similar board shall give a hearing at which parties in interest and others shall have an opportunity to be heard. At least fifteen days' notice of the time and place of such hearing shall be published in an official publication of said city or in a newspaper of general circulation therein. Any such

decision shall be subject to review by certiorari order issued out of a court of record in the same manner and pursuant to the same provisions as in appeals from the decisions of such board upon zoning regulations.

SEC. 36. MUNICIPAL IMPROVEMENTS IN STREETS; BUILDINGS NOT ON MAPPED STREETS. No public sewer or other municipal street utility or improvement shall be constructed in any street or highway until such street or highway is duly placed on the official map or plan. No permit for the erection of any building shall be issued unless a street or highway giving access to such proposed structure has been duly placed on the official map or plan. Where the enforcement of the provisions of this section would entail practical difficulty or unnecessary hardship, and where the circumstances of the case do not require the structure to be related to existing or proposed streets or highways, the applicant for such a permit may appeal from the decision of the administrative officer having charge of the issue of permits to the board of appeals or other similar board in any city which established a board having power to make variances or exceptions in zoning regulations, and the same provisions are hereby applied to such appeals and to such board as are provided in cases of appeals on zoning regulations. The board may in passing on such appeal make any reasonable exception and issue the permit subject to conditions that will protect any future street or highway layout. Any such decision shall be subject to review by certiorari order issued out of a court of record in the same manner and pursuant to the same provisions as in appeals from the decisions of such board upon zoning regulations.

SEC. 37. PLANNING BOARD, CHANGES IN ZONING REGULATIONS. The body creating said planning board is hereby authorized by ordinance or resolution applicable to the zoning regulations of such city or any portion of such zoning regulations, to empower it, simultaneously with the approval of any such plat either to confirm the zoning regulations of the land so platted as shown on the official zoning maps of the city or to make any reasonable change therein, and such board is hereby empowered to make such change. The owner of the land shown on the plat may submit with the plat a proposed building plan indicating lots where group houses for residences or apartment houses or local stores and shops are proposed to be built. Such building plan shall indicate for each lot or proposed building unit the maximum density of population that may exist thereon and the minimum yard requirements. Such plan, if approved by the planning board, shall modify, change or supplement the zoning regulations of the land shown on the plat within the limitations prescribed by such legislative body in said ordinance or resolution. Provided that for such land so shown there shall not be a greater average density of population or cover of the land with buildings than is permitted in the district wherein such land lies as shown on the official zoning map. Such building plan shall not be approved by the planning board unless in its judgment the appropriate use of adjoining land is reasonably safeguarded and such plan is consistent with the public welfare. Before the board shall make any change in the zoning regulations there shall be a public hearing preceded by the same notice as in the case of the approval of the plat itself. On the filing of the plat in the office of the county clerk or registrar such changes, subject, however, to review by court as hereinafter provided, shall be and become part of the zoning regulations of the city, shall take the place of any regulations established by the board of estimate or other legislative authority of the city, shall be enforced in the same manner and shall be similarly subject to change.

SEC. 38. COURT REVIEW. Any person or persons, jointly or severally aggrieved by any decision of the planning board concerning such plat or the changing of the zoning regulations of such land, or any officer, department, board or bureau of the city, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition must be presented to the court within thirty days after the filing of the decision in the office of the board.

Upon the presentation of such petitions, the court may allow a certiorari order directed to the planning board to review such decision of the planning board and shall prescribe therein the time within which a return thereto must be made and served upon the realtor's [relator's] attorney, which shall not be less than ten days and may be extended by the court. The allowance of the order shall stay proceedings upon the decision appealed from.

The planning board shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such order. The return must concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and must be verified.

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs shall not be allowed against the planning board, unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

All issues in any proceeding under this section shall have preference over all other civil actions and proceedings.

SEC. 2. This act shall take effect immediately.

J. PENNSYLVANIA GENERAL PLAN ACT [1]

SEC. 9. Every municipal corporation shall have power to open, widen, straighten, or extend streets or alleys, or parts thereof, within its limits, and to vacate streets or alleys, or parts thereof. . . . The widening or straightening ordinances shall fix the new line or lines, and may require that thereafter no owner or builder shall erect any new building or rebuild or alter the front of any building already erected without making it conform to the new lines, in which case the landowner's right of action shall accrue only when the said municipal corporation actually enters on and occupies the land within the said lines, or the said building is located or relocated to conform to said lines. . . .

. . . . . .

SEC. 12. Every municipality shall have a general plan of its streets and alleys, parks and playgrounds, including those which have been or may be laid out, but not opened; which plan shall be filed in the office of the engineer or other proper office of the munici-

[1] Laws 1891, No. 59, as amended by Laws 1913, No. 430, and Laws 1921, No. 295. (See also Laws 1871, No. 1258, which affects only Philadelphia.)

pality, and all subdivisions of property thereafter made shall conform thereto. The location of streets or alleys, or parts thereof, or parks or playgrounds, laid out and confirmed by authority of councils; shall not afterwards be altered without the consent of councils; and no map or plot of streets or alleys, or parks or playgrounds, shall be entered or recorded in any public office of the county in which said municipality is situated until approved by councils. No person shall hereafter be entitled to recover any damages for the taking for public use of any buildings or improvements of any kind which may be placed or constructed upon or within the lines of any located street or alley, or park or playground, after the same shall have been located or ordained by councils.

K. Pennsylvania Planning Enabling Act for Second Class Cities [1]

Sec. 5. General Powers and Duties. It shall be the duty of the commission to make and adopt a master plan, either as a whole or in sections, from time to time, for the physical development of the city and of any land outside its boundaries which in the commission's judgment bears relation to the planning of such city. Such plan or plans, with the accompanying maps, plats, charts, and descriptive matter, shall show the commission's recommendations for the future development of said territory, including among other things the general location, character, and extent of streets, viaducts, subways, bridges, waterways, water fronts, boulevards, parkways, playgrounds, squares, parks, aviation field, and other public ways, grounds, and open spaces, and a major street plan, the general location of public buildings and other public property, and the general location and extent of public utilities and terminals, whether publicly or privately owned or operated, for water, light, sanitation, transportation, communication, power, and other purposes, and the removal, relocation, widening, narrowing, vacating, abandonment, change of use or extension of any of the foregoing ways, grounds, open spaces, buildings, public utilities or terminals, as well as a zoning plan for the control of the height, area, bulk, location, occupation, and use of buildings and land. The commission may from time to time make, adopt, and publish a part of the plan covering one or more divisions of the city or one or more of the aforesaid or other subjects. The commission may from time to time amend, extend or add to the plan or any section thereof.

. . . . . .

Sec. 7. Legal Status of Official Plan. Whenever the commission shall have adopted the master plan of the city, or of any division thereof, no street, square, park or other public way, ground or open space or public building or structure or public utility, for which a franchise may hereafter be granted by the proper municipal authorities, whether publicly or privately owned, shall be constructed or authorized in the city, unless the location and general extent conform thereto: Provided, In case the said proposed street, square, park or other public way, ground or open space, or public building or structure or public utility, as aforesaid, does not conform to said master plan, and the city planning commission, upon application to it, shall refuse to alter said master plan so as to permit said street, square, park or other public way, ground or open space or public building or structure or public utility, as aforesaid, the said city planning commission

[1] Laws 1927, no. 492, as amended by Laws 1931, no. 185.

shall refer the same to the council, together with its reasons for disapproval, and the council shall have power to overrule said disapproval by a majority vote of its entire membership. The failure of the commission to act within sixty days from and after the date of official submission to the commission shall be deemed approval.

. . . . . .

SEC. 17. RESERVATION OF LOCATIONS OF MAPPED STREETS FOR FUTURE PUBLIC ACQUISITION. The city planning commission of such cities is empowered, after it shall have adopted a major street plan of the city or any section or part of it, to make or cause to be made from time to time surveys for the exact location of the lines of a new street or streets, or for the relocation or widening of existing streets, in any portion of such territory, and to make a plat of the area or district thus surveyed showing the land which it recommends be reserved for future acquisition for public streets. The commission, before adopting any plat, shall hold a public hearing thereon, notice of the time and place of which, with a general description of the district or area covered by the plat, shall be published once not less than ten days previous to the time fixed therefor. After such hearing the commission may transmit the plat as originally made, or modified as may be determined by the commission, to council, together with the commission's estimates of the time or times within which the lands shown on the plat as street locations should be acquired by the city. Thereupon by ordinance council may approve and adopt, or may reject, such plat, or may modify it with the approval of the planning commission, or, in the event of the planning commission's disapproval, council may, by a majority vote of its entire membership, modify such plat and adopt the modified plat. In the ordinance of adoption of a plat council shall fix the period of time for which such street locations shall be deemed reserved for future taking or acquisition for public use. Such approval and adoption of a plat shall not, however, be deemed the opening or establishment of any street, nor the taking of any land for street purposes, nor for public use, nor as a public improvement, but solely as reservation of the street locations shown thereon, for the period specified in the ordinance, for future taking or acquisition for public use. The commission may at any time negotiate for or secure from the owner or owners of any such lands releases of claims for damages or compensation for such reservations, or agreements indemnifying the city from such claims by others, which releases or agreements shall be binding upon the owner or owners executing the same and their successors in title. After a plat is so adopted it may be changed by council to conform to a new plat prepared by the commission after a hearing similar to that required in the case of the original plat. At any time council may by ordinance abandon any reservation.

SEC. 18. COMPENSATION FOR SUCH RESERVATIONS. On petition, viewers shall be appointed, as provided by law for municipal improvements, who shall fix the amount of compensation to be paid to the respective owners of lands reserved for the period of time as shown on the plat and fixed by the ordinance of council.

SEC. 19. NO COMPENSATION FOR BUILDINGS IN RESERVED STREET LOCATIONS. The reservation of a street location, as provided in section seventeen of this act, shall not be deemed to prohibit or impair in any respect the use of the reserved land by the owner or occupant thereof for any lawful purpose, including the erection of buildings thereon, but no compensation other than the compensation awarded in the final report of said board of viewers, or, in the case of an appeal, as awarded on such appeal, shall at any time be paid

by the city to, or recovered from the city by, any person for the taking of or injury to any building, structure or other improvement built or erected within the period fixed in the ordinance of council upon any such reserved location.

L. Pennsylvania Planning Enabling Act for Boroughs [1]

Article XVI

(*g*) *Plans and Location of Streets*

Sec. 1660. General Plan of Streets. Every borough shall have a general plan of its streets and alleys, including those which have been laid out but not opened.

Sec. 1661. Filing Plans; Subdivisions. The plan shall be filed in the office of the engineer, or other proper office of the borough, and all subdivisions of property thereafter made shall conform thereto.

Sec. 1662. Alterations; Maps and Plats to Be Approved. The location of streets or alleys laid out by council shall not afterwards be altered without the consent of council; and no map or plot of streets or alleys shall be entered in any public office of the county until approved by council.

Sec. 1663. Location of Streets. Boroughs may, by ordinance, locate streets and alleys, and include therein streets and alleys theretofore opened or used for highway purposes; and may locate streets or alleys theretofore opened or used for highway purposes of a greater width; and may revise the lines of such streets or alleys in accordance therewith, and place the same on the general plan of such borough. All subdivisions of property thereafter made shall conform thereto.

Sec. 1664. Locations Not to Authorize Entry. No such location shall authorize the entry upon or appropriation of any property, within such located street or alley, not theretofore opened or used for highway purposes, nor shall the same interfere in any way with the rights of the owners to the full use of such property.

Sec. 1665. No Damages Allowed for Erections on Located Streets. No person shall recover any damages for the taking for public use of any buildings or improvements constructed within the lines of any located street or alley, after the same shall have been so located; and any such building or improvement shall be removed at the expense of the owner.

Article XXVII

Sec. 2717. Plan of Parks and Playgrounds. Every borough shall have a general plan of its parks and playgrounds, which plan shall be filed in the office of the engineer or other proper officer of the borough. All subdivisions of property thereafter made shall conform thereto. The location of parks and playgrounds, laid out and confirmed by the borough council, shall not afterwards be altered without the consent of council, and no map or plot of parks or playgrounds shall be entered or recorded in any public office of the county until approved by the borough council.

[1] Laws 1927, no. 336.

M. Pennsylvania Planning Enabling Act for First Class Townships [1]

Article XX. Roads, Streets and Highways

(a) *Plans of Streets*

Sec. 2001. Every township shall have a general plan of its streets and alleys, including those which have been or may be laid out but not opened. Such plan shall be filed in the office of the engineer or other proper officer of the township, and all subdivisions of property thereafter made shall conform thereto. No streets or alleys, or parts thereof, laid out or accepted and confirmed on such plan, shall afterwards be altered without the consent of the commissioners of the township. No person shall be entitled to recover any damages for any improvements placed or constructed within the lines of any street or alley after the same has been located or ordained on the plan provided for by this section.

. . . . . .

(c) *Dedicated Roads, Streets, Lanes, Alleys, and Drainage Facilities*

Sec. 2020. Plans of Dedicated Roads and Streets. No person shall construct, open, or dedicate any road, street, lane or alley, or any drainage facilities in connection therewith, for public use or travel in any township, without first submitting plans thereof to the township commissioners for their approval. Such plans shall be prepared in duplicate in accordance with such rules and regulations as may be prescribed by the commissioners, and shall show the profiles of such roads, streets, lanes or alleys, the course, structure, and capacity of any drainage facilities, and the method of drainage of the adjacent or contiguous territory, and also any other or further details that may be required under the rules and regulations adopted by the township commissioners. Before acting upon any such plans, the commissioners may, in their discretion, arrange for a public hearing, after giving such notice as they may deem desirable in each case. The township commissioners are authorized to alter such plans, or order the same to be altered, and to specify any changes or modifications of any kind which they, in their discretion, may deem necessary with respect thereto, and may make their approval of such plans subject to any such alterations, changes or modifications, but no plans shall be approved until there is a solicitor's report as to municipal liens. Any plans when so approved shall be signed, in duplicate, on behalf of the township by such officer as the commissioners may designate, and an approved duplicate copy shall be filed in the township engineer's office or other proper office, where the same shall be available to public inspection. No road, street, lane or alley, or any drainage facilities in connection therewith, shall be opened, constructed, or dedicated for public use or travel, except in strict accordance with plans so approved by the commissioners, or with further plans subsequently approved by them in the same manner, nor until such plan, and the approval thereof, has been recorded as hereinafter provided.

Sec. 2021. Appeals Where Commissioners Refuse Approval. In any case where the township commissioners shall refuse to approve any plans submitted to them in accordance with this act, any person aggrieved by the action of the commissioners may, within thirty days after such action, appeal therefrom by petition to the court of quarter sessions of the county, which court shall hear the matter de novo, and, after hearing, may

[1] Laws 1931, No. 331.

enter a decree affirming, reversing, or modifying the action of the commissioners as may appear just in the premises. The court shall designate the manner in which notices of the hearing of any such appeal shall be given to all parties interested. The decision of the court shall be final.

The action of the township commissioners, or of the court on appeal, in approving any such plans, and an approved duplicate copy of such plans, shall be recorded by the person applying for such approval in the office of the recorder of deeds of the county.

Sec. 2022. No Responsibility on Township Where Plans not Approved. If any road, street, lane or alley, or any drainage facilities in connection therewith, shall be opened, constructed, or dedicated for public use or travel, except in strict accordance with plans approved, as provided in this subdivision, neither the township commissioners nor any public authorities shall place, construct, or operate any sewer, drain, water pipe, or other facilities, or do any work of any kind, in or upon such road, street, lane or alley; and neither the township commissioners, nor any other public authorities, shall have any responsibility of any kind with respect to any such road, street, lane, alley, or drainage facilities, notwithstanding any use of the same by the public, unless such road, street, lane, alley, or drainage facilities, are accepted by ordinance: Provided, however, That nothing herein contained shall prevent the laying of trunk sewers, drains, water or gas mains, if required by engineering necessity for the accommodation of other territory.

. . . . . .

Article XXXII. Township Planning Commission

Sec. 3203. Preparation of Maps and Recommendations. The Township Planning Commission may make, or cause to be made, and lay before the township commissioners, and, at its direction, cause to be published, maps of the township or any portion thereof, including territory extending three miles beyond the township limits, showing the streets and highways and other natural and artificial features, and also locations proposed by it for any new public buildings, civic centre, street, parkway, park, playground, or any other public ground or public improvement, or any widening, extension, or relocation of the same, or any change in the township plan by it deemed advisable; and it may make recommendations to the township commissioners, from time to time, concerning any such matters and things, aforesaid, for action; and, in so doing, have regard for the present conditions and future needs and growth of the township and the distribution and relative location of all the principal and other streets and railways, waterways, and all other means of public travel and business communications, as well as the distribution and relative location of all public buildings, public grounds, and open spaces devoted to public use.

Sec. 3204. Recommendations of Commission. The Planning Commission may make recommendations to any public authorities, or any corporations or individuals in the township, with respect to the location of any buildings, structures, or works, to be erected or constructed by them.

Sec. 3205. Plans and Plots; Jurisdiction of Commission in Certain Cases. All plans, plots, or re-plots of lands laid out in building lots, and the streets, alleys, or other portions of the same intended to be dedicated to public use, or for the use of purchasers or owners of lots fronting thereon or adjacent thereto, and located within the township limits, or for a distance of three miles outside thereof, shall be submitted to the

Planning Commission and approved by it before it shall be recorded. It shall be unlawful to receive or record such plan in any public office unless the same shall bear thereon, by endorsement or otherwise, the approval of the Planning Commission. The disapproval of any such plan by the Planning Commission shall be deemed a refusal of the proposed dedication shown thereon. The approval of the commission shall be deemed an acceptance of the proposed dedication, but shall not impose any duty upon the township concerning the maintenance or improvement of any such dedicated parts until the township commissioners shall have made actual appropriation of the same by entry, use, or improvement. No sewer, water or gas-main or pipes, or other improvement shall be voted or made within the area under the jurisdiction of said commission for the use of any such purchasers or owners, nor shall any permit for connection with or other use of any such improvement existing, or for any other reason made, be given to any such purchasers or owners, until such plan is so approved. Where the jurisdictional limit of three miles outside of the township limits, as provided in this section, may conflict with the zone of similar character connected with another township or city, the jurisdiction of said commission shall extend only to the point equidistant between the township and city.

N. Pennsylvania Highway Building Line Law [1]

Sec. 8. . . . . .

The State Highway Commissioner shall also have power, with the approval of the Governor, to establish the width and lines of any State Highway before or after the construction, reconstruction, or improvement of the same, not, however, exceeding the maximum width fixed by law for public roads. Whenever the State Highway Commissioner shall establish the width and lines of any such State Highway, he shall cause a description and plan thereof to be made showing the center line of said highway and the established width thereof. . . .

No owner or occupier of lands, buildings, or improvements shall erect any building or make any improvements within the limits of any State Highway the width and lines of which have been established and recorded as provided in this section, and, if such erection or improvement shall be made, no allowance shall be had therefor by the assessment of damages.

O. Pennsylvania Law Protecting Future Highway Locations [2]

Authorizing the Secretary of Highways, with the approval of the Governor, to establish the width and lines of State highways for future construction where it appears uneconomical to widen existing highways; providing for acknowledgment by the Secretary of Highways and recording of plans therefor in the proper county; and providing further that no allowance shall be made for buildings or improvements erected or made within the limits of any such highway; and providing for the payment of damages.

Sec. 1. Be it enacted, &c., That the Secretary of Highways, with the approval of the Governor, may designate the future location and width of the proposed highway and

[1] Laws 1921, no. 62, amending Laws 1911, May 31, P. L. 468.
[2] Laws 1925, no. 382.

continue to maintain the present highway until such time as the amount of traffic warrants the construction of the new highway designated.

SEC. 2. Whenever the Secretary of Highways shall establish the width and lines of any such highway he shall cause a description and plan thereof to be made, showing the center line of said highway and the established width thereof, and shall attach thereto his acknowledgment. . . .

P. TENNESSEE BUILDING LINE LAW[1]

SEC. 2. *Be it further enacted*, That it shall be lawful for any municipality having a population in excess of 160,000 inhabitants, by the Federal Census or [*sic*] 1920, or by any subsequent Federal Census, to provide by ordinance for the establishment of a building line, or lines, on any street. After the establishment of any such line, or lines, no building or other structures shall be erected and no existing building re-constructed or repaired to the extent of more than seventy-five per cent of its value, and no building or other structure shall be re-erected, within the line or lines so established, except subject to the rights of the municipality acquired under any such building line ordinance.

Such line or lines may be established on one or both sides of any street, for the total length of any street or any part thereof. The ordinance establishing such line or lines shall set forth the name of the street, and the part or parts thereof to which said line or lines shall apply, and shall provide that the owners of property abutting on said street within the part affected by such line, or lines, shall take notice of and be bound by the provisions of such ordinance.

SEC. 3. *Be it further enacted*, That upon the final passage of such ordinance the municipality passing the same shall be conclusively held to have taken an easement of way over all lands abutting the part or parts of the street to which such building line ordinance is applied, and the owners of such lands shall thereupon be entitled to all the benefits accruing to owners of lands or other property taken by the public for public use, under the laws of eminent domain of the State of Tennessee. No notice of the taking of such easement to the owner of any property affected thereby shall be required other than the passage of an ordinance in conformity with the charter provisions of any municipality passing such ordinance. Such ordinance shall also provide that at a future time to be therein specified, not later than twenty-five (25) years after the passage of such ordinance, the municipal corporation shall widen the street to the line or lines established in such ordinance; but between the time of the passage of such ordinance, and the time fixed therein at which the street shall be widened to such a line, or lines, the owners of the lands over which the municipality has acquired the easement aforesaid, shall have the right to make any use of such land not inconsistent with the right of such municipality under its easement, or inconsistent with the provisions of this Act, including the right to maintain upon such land any building, structure, or appurtenances existing thereon at the time of the passage of such ordinance.

SEC. 4. *Be it further enacted*, That the municipality passing such ordinance may proceed to the assessment of damages to the owners of lands affected thereby under the

[1] Private Acts 1923, Vol. II, c. 415.

law relating to eminent domain; and the owners of such land shall likewise have the right to institute in any court of competent jurisdiction their actions to have assessed the damages sustained by them; but no action shall be brought by any owner of property affected by such ordinance for damages by reason of the taking of such easement, unless the action shall have been brought within twelve months of the final passage of the ordinance establishing such line or lines; provided, however, that this shall not apply to any person under disability whose right to bring an action is regulated or governed by any other Act or law of the State of Tennessee.

The measure of damage for the taking of such easement under any such ordinance shall be the difference between the value of the land at the time of the taking, without the easement, and the value of the land at the time of the taking subject to the easement of the municipality acquiring in [*sic*] under the ordinance; provided, however, that should this provision of this Act relating to the rule of the damages be held invalid, that the owners of any property affected by the taking of such easement by the municipality shall be entitled to such damages as may be awarded them under the law of the land. Nothing herein contained shall be held to give any municipality passing an ordinance under the provisions hereof, any right, title or interest in or to any building or improvement now or hereafter erected on any land over which the city acquires the easement hereinbefore provided for, or to the use or possession of any land within the line or lines so established until the acquisition of the land as hereinafter provided for.

SEC. 5. *Be it further enacted*, That at the end of the period designated in such ordinance the municipality passing it shall proceed to widen the street named therein, and to that end shall thereupon proceed to acquire by purchase, condemnation, or otherwise, the land necessary to be taken for such widening and the owner thereof shall be entitled to such damages as he may then be entitled to under the law where private property is taken for public use. Such widening and improving shall be done under any law then existing relating to the widening and improving of any street in any such municipality, and the cost thereof shall be borne in the manner then provided by law.

SEC. 6. *Be it further enacted*, That if, between the time of the passage of any such ordinance and the widening of such street under the ordinance, the owners of land abutting such building line, or lines, are damaged by the passage of such ordinance in any manner otherwise than by the taking of such easement in the land, each shall have a right of action against the municipality passing such ordinance for any damages legally recoverable for such injury; provided, however, that any such action shall be brought within one year from the time it shall accrue, saving, however, to persons under any legal disability the right to bring such action within such time as may be provided by law.

SEC. 7. *Be it further enacted*, That damages for the easement taken or damages to any owner hereinbefore provided for, may be paid by the municipality out of any general or special fund which may be provided for that purpose under the general law of the State of Tennessee, or any charter provision of any such municipality.

SEC. 8. *Be it further enacted*, That this act shall not limit or abridge any power now or hereafter conferred by law on any municipality to establish building lines, whether under the police power, by eminent domain, or otherwise.

Q. Texas Building Line Law [1]

AN ACT to authorize the establishment of building lines on streets in cities which now have, or may hereafter have, fifteen thousand or more inhabitants, and to provide the manner in which damages may be determined and paid and benefits assessed and collected.

Be it enacted by the Legislature of the State of Texas:

Sec. 1. The word "street" as used in this Act, means any public highway, boulevard, parkway, square or street, or any part or side of any of the same.

Sec. 2. It shall hereafter be lawful for any city which now has, or may hereafter have population of fifteen thousand (15,000) or more inhabitants, to establish building lines on any public street or highway, or part thereof in such city.

Sec. 3. The Legislative Body of any such city desiring to establish a building line may do so by adopting a resolution or ordinance describing the street, highway or part thereof to be affected, and the location of the building line or lines, and except as herein otherwise provided, by following the same procedure as that authorized by law in such city for the acquiring of land for the opening of streets. After the establishment of any such line, no building or other structures shall be erected, reconstructed or substantially repaired, and no new buildings or other structure, or part thereof, shall be erected or re-erected within said lines so established.

Sec. 4. The procedure for instituting and conducting the condemnation proceedings to condemn the easements and interests necessary to be taken and acquired to establish a building line under the authority of this Act, and to assess and collect benefits against property owners and their property abutting on or [in] the vicinity of said building line arising out of the establishment of said building line, shall be the same as that authorized by law in such city in connection with the opening of streets. In the condemnation of any tract where the ownership of or interests in said tract is in controversy or is unknown, the award may be made in bulk as to such tract, and paid into court for the use of the parties owning or interested therein, whoever they may be, as their interests may appear. The award and findings of the Special Commissioners when filed with the Judge of the County Court, or other court having jurisdiction over the condemnation proceedings, shall be final, and shall be made the judgment of said court. Compensation shall be due and payable upon rendition of the judgment by the court adopting the award.

Sec. 5. Whenever and wherever a building line shall be established under authority of this Act, all structures extending within such building lines shall be required to conform to the new line within a period of not more than twenty-five (25) years from the time of establishing said lines; such time to be provided in the ordinance providing for the establishment of such line. At any time, however, before or after the expiration of the time so fixed, the proper municipal authorities shall have the power to proceed in the manner then provided by law relating to condemnation proceedings by such cities to remove all structures and to condemn any property then within such line, and to assess benefits against property owners and their property benefited thereby, provided, however, that all owners of property so affected shall receive due notice and hearing in the manner then provided by law in the determination of the additional damages then sustained

[1] Laws 1927, c. 276.

by the removal of such structures or the taking of land then within the building line and in the determination of benefits to be assessed against property owners affected and their property affected.

SEC. 6. This Act shall be in addition to and cumulative of any powers now or hereafter conferred by law on such cities.

SEC. 7. The absence of any law controlling and fixing the building lines creates an emergency and imperative public necessity which demands that the constitutional rule requiring that bills be read on three several days before final passage, be suspended, and that this Act shall take effect and be in force from its passage, and it is so enacted.

R. WISCONSIN LAW AUTHORIZING HIGHWAY WIDENING BY COUNTY BOARDS [1]

(3) The county board of any county in this state, where it is deemed that the general welfare will be promoted thereby, may establish for streets or highways widths in excess of those actually and presently in use, upon obtaining the approval of the governing body of the municipality in which each such street or highway, or part thereof, is located, and likewise may adopt plans showing the location and width proposed for any future street or highway. Such streets or highways or plans therefor shall be shown on a map prepared for that purpose and filed in the office of the register of deeds, and notice thereof shall be published in a newspaper of general circulation in the territory in which such streets or highways are located once each week for three successive weeks, and shall be posted in at least three public and conspicuous places along each such street or highway. Such notice need not contain legally accurate descriptions but shall briefly set forth the action of the county board in language adequate to apprise the various property owners of the effect of such action. Thereafter the county board, upon like approval, publication and notice, may from time to time alter, supplement, or change the same, and such alterations, supplements or changes shall be similarly filed in the office of the register of deeds. The excess width for streets or highways actually and presently in use, or the right-of-way required for those planned as aforesaid need not immediately be acquired for highway purposes, but may be acquired at any time either in whole or in part by the county, or by the municipality in which it is located; provided, however, that no part shall be acquired in less than the full extent, in width, of the excess width to be made up of land on the same side of such highway, nor for less than the full distance, in length, of such excess width lying within the limits of contiguous land owned by the same owner; and provided, further, that any land so acquired, whether the excess width is acquired for the full length of the highway or not, shall at once become available for public highway purposes. The power to acquire such right-of-way or additional width of highway in portions as provided herein may be exercised for the purpose of acquiring such land on advantageous terms to the municipality or county, whether by reason of availing itself of any favorable offer of such land, or by reason of avoiding additional cost thereof on account of the erection or making of contemplated improvements thereon by the owner thereof, or by any other reason. [*Laws 1931 c. 303*]

[1] Wis. Stat. (1931) § 80.64.

APPENDIX IV

EXCERPTS FROM CITY AND COUNTY ORDINANCES, RESOLUTIONS, ETC.

A. Berkeley, Cal. Building Line Ordinance

Ordinance No. 791–N. S.

Providing for the method of procedure to be followed by the City of Berkeley in the establishment of set back lines on its streets, and providing penalties for the violation of the provisions of this ordinance.

Be it ordained by the Council of the City of Berkeley as follows:

Sec. 1. That set-back lines may be established along any street, highway or public place in the City of Berkeley in accordance with the following procedure: Set-back lines may be established in the City of Berkeley and proceedings for the establishment of set-back lines may be initiated by the filing of a petition with the Council asking for the establishment of such set-back lines or the same may be initiated by the Council. Such petition shall state the street, highway or public place, giving the dimensions of the portion of such street, highway or public place where set-back lines are to be established. The City Council shall refer the petition to the City Planning Commission for their investigation and report upon the desirability or necessity of establishing such set-back lines. No action shall be taken by the City Council without first obtaining a report from said City Planning Commission unless such report is delayed beyond a reasonable time which shall not exceed three months.

Sec. 2. Said set-back lines shall be established by ordinance and whenever the Council of the City of Berkeley shall introduce an ordinance to establish said set-back lines then the Street Superintendent shall immediately after the introduction of said ordinance cause to be conspicuously posted along the streets within the district affected by said ordinance notices of the introduction of said ordinance, at least one notice for each block included in the district affected. Said notices shall be headed "notice to establish set-back lines" in letters not less than one inch in height and shall state the facts of the case in concise language. Said notice shall also contain a statement of the day and place when and where any and all persons having any objections thereto may appear before the City Council and show cause. Written protests may be filed at any time before said hearing. At the time set for hearing the City Council shall proceed to hear and pass upon all protests, and its decision shall be final and conclusive. The failure of the Superintendent of Streets to post such notices shall not invalidate or affect the jurisdiction of the Council to adopt such ordinances.

Sec. 3. Upon consideration of such petition as above stated, or upon its own motion, the Council of the City of Berkeley may determine the minimum distance back from the main line for the erection of buildings or structures along any portion of any street, highway or public place in the City of Berkeley, and may establish a line to be known and

designated as a set-back line between which line and the street line no buildings or structures shall be erected or constructed.

SEC. 4. From and after the taking effect of such ordinance establishing any set-back line or lines it shall be unlawful for any person, firm or corporation to construct any building, wall, fence or other structure within the space between the street line and the set-back line so established, and the building inspector shall refuse to issue any permit for any building, wall, fence or other structure to be erected within such space.

SEC. 5. Any person, firm or corporation violating any of the provisions of any ordinance establishing any set-back line or lines pursuant to this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than Five Hundred (500) Dollars or by imprisonment in the County Jail of not more than six (6) months, or by both such fine and imprisonment. And if such building, wall or structure be not removed within a reasonable time after conviction under this ordinance, then every day thereafter during which said building, wall or structure shall be allowed to remain in violation of this ordinance shall constitute a separate and distinct violation of this ordinance by the person, firm or corporation allowing such violation to continue.

SEC. 6. This ordinance shall take effect and be in force from and after thirty (30) days after its final passage.

SEC. 7. This bill is hereby ordered to be published with the vote thereon for two (2) days in the "Berkeley Daily Gazette."

At a regular meeting of the Council of the City of Berkeley, held on the 11th day of April, 1922, this Bill was passed to print and ordered published. . . .

B. LOS ANGELES, CAL. BUILDING LINE ORDINANCE

Ordinance No. 42,882

(New Series)

As amended by Ordinance No. 71,315.

TITLE. [As amended by Ordinance No. 71,315, approved May 6, 1932.] An Ordinance prescribing the method of procedure for establishing building-lines in the City of Los Angeles and the penalty for the violation of ordinances establishing such lines.

The People of the City of Los Angeles do ordain as follows:

SEC. 1. [As amended by Ordinance No. 71,315, approved May 6, 1932.] Proceedings for the establishment of building-lines along any portion of any street or other public way or place in the City of Los Angeles may be initiated as in this ordinance provided. A petition may be filed with the City Planning Commission asking that such building-line or lines be established, which petition shall designate the street or portion of street along which such lines are sought to be established, and the distance thereof from the regularly established property line. Said Commission shall thereafter cause an investigation to be made, after which said petition shall be presented to the City Planning Committee of the Council, together with the recommendation of the City Planning Commission. Said City Planning Committee shall thereafter consider the merits of said petition, together

with said recommendation of the City Planning Commission, and shall immediately after a decision has been reached in said Committee, forward said petition to the City Council, together with a report of the findings of said Committee.

SEC. 2. [As amended by Ordinance No. 71,315, approved May 6, 1932.] Upon consideration of such petition, or upon its own motion, whenever the public peace, health, safety, comfort, convenience, interest or general welfare may require, the Council of the City of Los Angeles is hereby authorized and empowered to determine the minimum distance back from the street line for the erection, construction or establishment of buildings, structures or improvements along any portion of any street, public way or place in the City of Los Angeles, and to order the establishment of a line to be known and designated as a building line between which line and the street line no building, structure or improvement shall be erected, constructed or established.

SEC. 3. [As amended by Ordinance No. 71,315, approved May 6, 1932.] Before ordering the establishment of any building-line authorized by Section 2, the Council shall pass a resolution of intention so to do, designating the building line or lines proposed to be established, which resolution shall be published once in a daily newspaper published and circulated in said city, and designated by said City Council for the purpose; and one copy of said resolution shall be posted conspicuously upon the street in front of each block or part of block of any street, public way or place where such building-line is proposed to be established. Said resolution shall contain, also, a notice of the day, hour and place when and where any and all persons having any objection to the establishment of the proposed building-line or lines may appear before said Council and present any objection which they may have to said proposed building-line or lines as set forth in said resolution of intention. Said time of hearing shall not be less than fifteen (15) nor more than forty (40) days from the date of the adoption of the resolution of intention; and said publication and posting of said resolution shall be made at least ten (10) days before the time of said hearing.

SEC. 4. [As amended by Ordinance No. 71,315, approved May 6, 1932.] After the adoption of said resolution of intention and prior to the time the ordinance establishing a building-line or lines in such proceedings becomes effective, no building permit shall be issued for the erection of any building, structure or improvement between any proposed building-line and the street line, and any permit so issued shall be void.

SEC. 5. [As amended by Ordinance No. 71,315, approved May 6, 1932.] At any time not later than the hour set for hearing objections and protests to the establishment of the proposed building-line or lines any person having any interest in any land upon which said building line is proposed to be established, may file with the City Clerk a written protest or objection against the establishment of said building line or lines designated in the resolution of intention. Such protest must be in writing and be delivered to said Clerk not later than the hour set for said hearing, and no other protests or objections shall be considered. All protestants may appear before the Council at said hearing, either in person or by counsel, and be heard in support of their protests or objections. At the time set for hearing, or at any time to which the said hearing may be continued, the Council shall proceed to hear and pass upon all protests or objections so made, and its decision shall be final and conclusive.

Said Council shall have power and jurisdiction to sustain any protest or objection and abandon said proceeding, or to deny any and all protests or objections, and order by ordi-

nance the establishment of said building-line or lines described in the resolution of intention, or to order the same established with such changes or modifications as the Council may deem proper. Said ordinance may refer to said resolution of intention for the description of said building-line or lines, when said building-line or lines ordered established are the same as described in said resolution of intention.

SEC. 6. [As amended by Ordinance No. 71,315, approved May 6, 1932.] From and after the taking effect of any ordinance establishing any building-line or lines, it shall be unlawful for any person, firm or corporation to erect, construct or establish any building, structure, wall, fence or other improvement within the space between the street line and the building-line so established and the Board of Building and Safety Commissioners shall refuse to issue any permit for any building, structure or improvement within such space, except that

1. Cornices, canopies, eaves or any other architectural features may extend into said setback space for a distance of not to exceed two (2) feet, six (6) inches;

2. Fire escapes may extend into said setback space for a distance of not to exceed four (4) feet, six (6) inches;

3. A landing place or uncovered porch may extend into said setback space for a distance of not to exceed six (6) feet, provided that the landing place or porch does not have its floor higher than the floor of the entrance opening thereon. An openwork railing no higher than two (2) feet, six (6) inches, may be placed around said landing place.

4. An openwork guard railing not to exceed forty-two inches in height may be placed in said setback space when erected as a safety precaution around a depressed ramp.

5. An openwork, ornamental lawn-fence, a hedge or landscape architectural features not exceeding forty-two (42) inches in height and/or not more than two sign-boards appertaining to the sale, lease or rent of the property on which they are located provided neither of such sign boards contain[s] a surface area greater than four (4) square feet, may be placed in said setback space.

6. On uphill hillside lots where the average cross-slope of the land, measured at right angles to the front lot line or tangent thereof and between the curb level and the level of a line parallel to and distant fifty (50) feet from said front line, exceeds twenty-five (25%) per cent, then a private garage building containing not more than eight hundred (800) square feet of floor area and having the top of its entrance wall no higher than four (4) feet above the ground level, may be erected or constructed in said setback space, provided the rear half of the garage building is below and totally covered by the natural ground level and that the doors into such garage building will not project over any public sidewalk when opened or when being opened.

SEC. 7. [As amended by Ordinance No. 71,315, approved May 6, 1932.] Any person, firm or corporation violating any of the provisions of any ordinance establishing any building-line pursuant to this ordinance, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than five hundred dollars ($500) or by imprisonment in the City Jail for a period of not more than six (6) months, or by both such fine and imprisonment. Each such person, firm or corporation shall be deemed guilty of a separate offense for each day during any portion of which any violation

of such ordinance is permitted, continued or committed by such person, firm or corporation, and shall be punishable therefor as provided by this ordinance.

SEC. 8. The City Clerk shall certify to the passage of this ordinance by a unanimous vote and cause the same to be published once in The Los Angeles Daily Journal.

. . . . . .

Approved Dec. 13, 1921.

C. SAN MATEO COUNTY, CAL. ZONING ORDINANCE [1]

SECTION 9. DEFINITIONS

. . . . . .

Yard, Front: A yard extending across the front of the lot between the inner side yard lines and measured from the front line of the lot to the nearest line of the building; provided, however, that if any Official Plan Line has been established for the street upon which the lot faces or if any future width line is specified therefor in Section 28 of this ordinance, then such measurement shall be taken from such Official Plan Line or such future width line to the nearest line of the building.

SECTION 13. REGULATIONS FOR A–1 DISTRICTS [2]

(*b*) Additional Regulations:

No building shall hereafter be erected, nor shall any use of land be conducted except the use of land for agricultural purposes so that the same will be closer to the right of way line of any street than any Official Plan Line or any building line which has been established for such street by the Street and Highway Plan, or section thereof, of the Master Plan of the County, or than any future width line or building line which may be specified therefor by the provisions of Section 28 or Section 29, respectively, of this ordinance.

SECTION 16. REGULATIONS FOR H–2 DISTRICTS [3]

(*d*) Front Yard Required:

Twenty-five (25) feet for any building used for residential purposes. No building used for other than residential purposes shall hereafter be erected nor shall any use of land be conducted except the use of land for agricultural purposes, so that the same will be closer to the nearest right of way line of any street or highway than a distance adequate to provide space necessary for automobile standing and traffic movements incidental to the use of such building or the conducting of such land use. If such distance is specified as an Official Plan Line or as a building line in the Street and Highway Plan of the Master Plan

[1] Ordinance No. 400. Adopted Oct. 2, 1933.

[2] A–1 districts include all the unincorporated territory of the County not included in any other district. The regulations reproduced here also apply in A–2 (Suburban Agricultural) districts.

[3] General Highway Frontage Districts. These front yard regulations (except the provision as to residential buildings) apply also in C–1 (Retail Business), C–2 (General Commercial), M–1 (General Industrial), and M–2 (Heavy Industrial) districts.

of the County or if such distance is in this ordinance specified as a building line or as a future width line for such street or highway, then such distance shall govern under the provisions of this paragraph.

SECTION 18. REGULATIONS FOR R–1 DISTRICTS [1]

(*d*) Front Yard Required:

Each lot shall have a front yard not less than twenty-five (25) feet in depth, except as otherwise specified for any "B" district [2] in which such lot may be located; provided, however, that in case a building line for the street upon which any lot faces is established by the Street and Highway Plan of the Master Plan of the County or is specified in Section 29 of this ordinance, then the front yard on such lot shall have a depth of not less than the distance from the street line specified for such building line.

Author's Note:

It will be noted that the foregoing regulations cover three types of building lines:

1. Building lines for the establishment of residential front yard depths.

2. Building lines for the protection of the future widths of streets and highways, either pending or cross-tied to the Street and Highway Plan.

3. Building lines for the purpose of requiring that roadside uses shall provide space for local traffic movements incidental to the conducting of such uses.

D. SANTA BARBARA, CAL. TYPICAL BUILDING LINE ORDINANCE

Ordinance No. 1290

An ordinance establishing a building set-back line of Montecito Street between State Street and Milpas Street in the City of Santa Barbara, California.

Be it ordained by the Council of the City of Santa Barbara, California:

SEC. 1. Pursuant to Resolution No. 683 (New Series) the City Council did, on the third day of December, 1925, hold a public hearing duly advertised in The Santa Barbara Daily News notifying any and all persons having any objections to the establishment of said lines to appear at said hearing and present any objections which they might have; and all protests and objections to said proposed set-back line having been denied; now therefore

The City Council hereby finds and determines that the public safety, convenience, interest and welfare of said City each requires the future widening of Montecito Street between State Street and Milpas Street and the establishment of the following described building set-back lines on said street, to-wit:

A straight line drawn from the northeasterly line of State Street to the southwesterly line of Milpas Street ten (10) feet northwesterly from the northwesterly line of Montecito Street as a set-back line, between which line and said northwesterly line of Montecito Street no building or structure shall hereafter be erected or placed.

[1] The front yard requirements for R–1 (one-family) and R–2 (two-family) districts are the same. Twenty-foot front yards, with the same qualifications as above, are required in four-family and multiple residential districts.

[2] Special combined districts subject to "building site area" regulations.

A straight line drawn from the northeasterly line of State Street to the southwesterly line of Milpas Street ten (10) feet southeasterly from the southeasterly line of Montecito Street, as a set-back line, between which line and said southeasterly line of Montecito Street no building or structure shall hereafter be erected or placed.

SEC. 2. This ordinance after its passage and authentication shall be published once in The Santa Barbara Daily News, a daily newspaper of general circulation, printed, published and circulated in said city and hereby designated for that purpose.

. . . . . .

Passed Feb. 18, 1926.

E. SANTA CLARA COUNTY, CAL. ORDINANCE ADOPTING STREET AND HIGHWAY PLAN

An ordinance of the County of Santa Clara, State of California, adopting a street and highway plan as a part of the Master Plan of said county; specifying the purposes and the effects of the adoption of said plan; establishing the official plan lines of streets and highways which are a part of said plan; providing that no building, structure or other specified improvement shall be erected or placed within such official plan lines, with provision for adjustment in the application of this provision; instructing the County Surveyor of said county to cause a full, true and correct copy of all maps establishing such official plan lines to be recorded in the office of the Recorder of said county; and further instructing said County Surveyor to post certain notices along every street or highway for which official plan lines are or shall hereafter be established.

The Board of Supervisors of the County of Santa Clara, State of California, do ordain as follows:

SEC. 1. There is hereby adopted a Street and Highway Plan as a part of the Master Plan of the County of Santa Clara, State of California.

SEC. 2. Said Street and Highway Plan is set forth on a series of section maps, each of which is entitled "Section ——" or "—— Unit" (here is inserted the designation of the Section Map) "of the Street and Highway Plan, being a part of the Master Plan of the County of Santa Clara, State of California." Said section maps, together with all notations, information and data contained thereon, are hereby made a part of this ordinance and constitute Sections 3, 3a, 3b and other sections thereof, each of which other sections is designated by the number "3" followed by a letter of the alphabet.

Such section maps as are made a part of this ordinance at the time of the adoption thereof are the sections then completed of a comprehensive Street and Highway Plan, as a subject of the Master Plan for the said County of Santa Clara, which Plan is now in process of preparation by the County Planning Commission of said County. On account of the large territorial extent of said County, the diversity of interests therein and the thorough and careful studies being made by said County Planning Commission, it is expected that the completion of the aforesaid Street and Highway Plan will require a considerable period of time. The Board of Supervisors hereby finds that the public interest, necessity and convenience require that as rapidly as sections of said Street and Highway Plan shall be completed, the same should be put into full operation and effect;

and said Board hereby declares it to be its intention to amend this ordinance from time to time by including therein subsequent sections of said Street and Highway Plan as rapidly as the same shall have been prepared and shall have been approved by said Board.

SEC. 4. The aforesaid Street and Highway Plan is adopted to protect and promote the public health, safety, peace, morals, comfort, convenience and general welfare and for the accomplishment thereof is adopted for the purposes more particularly set forth as follows:

(1) To assist in providing a definite plan of development for the County of Santa Clara, and to guide, control and regulate the future growth of said County in accordance with said Plan.

(2) To provide a guide for the intelligent outlay of the capital expenditures of said County for street and highway improvements.

(3) To provide an authentic source of information as to the development of the County for prospective residents and investors therein.

(4) To provide a pattern for such future subdivision of land as may take place in said County.

(5) To obviate the menace to the public safety resulting from inadequate provision of traffic thoroughfares in connection with and as a result of the development of the County.

(6) To prevent deterioration of property values and impairment of conditions making for desirable agricultural, residential, commercial or industrial development, as the case may be, which would result from a lack of plans designed to assure the orderly, harmonious and beneficial development of the County and of all sections thereof.

SEC. 5. The Street and Highway layout of any subdivision of land falling under the provisions of Ordinance No. 74 of said County shall be based upon the aforesaid Street and Highway Plan adopted by this ordinance.

SEC. 6. The adoption of the aforesaid Street and Highway Plan shall in all particulars have the full force and effect provided by law.

SEC. 7. For the full accomplishment of the purposes of this ordinance, the official plan lines of streets and highways which are a part of the aforesaid Street and Highway Plan are hereby established, as particularly set forth on maps each of which is entitled "Official Plan Lines of ——" (here is inserted the official name of the street or highway) "being a part of the Street and Highway Plan of the Master Plan of the County of Santa Clara, State of California." Said maps and all notations, information and data appearing thereon are hereby made a part of this ordinance and constitute Sections 8, 8a, 8b and other sections hereof, each of which other sections is designated by the number "8" followed by a letter of the alphabet.

SEC. 9. No building, structure or other improvement shall hereafter be erected or placed within the official plan lines of streets and highways as established by this ordinance, except that this provision shall not apply to garden and agricultural crop planting and such ordinary farm and front yard fences and such more or less non-permanent irrigation structures as, in the opinion of the County Planning Commission, will not defeat the purposes of this ordinance.

SEC. 10. The Board of Supervisors of the County of Santa Clara, upon the recommendation of the County Planning Commission of said County, shall have power to grant

adjustments or variances in the strict application of the provisions of Section 9 of this ordinance in cases in which the strict application of such provisions would result in the serious impairment of substantial property rights.

Application for any adjustment or variance permissible under the provisions of this section shall be made to the said Board of Supervisors and shall include application for a permit to erect or place the building, structure or other improvement. Said Board shall thereupon refer said application to the County Planning Commission.

Upon receipt of any such application the County Planning Commission shall hold at least one (1) public hearing thereon, notice of which shall be given by one (1) publication in a newspaper of general circulation in said County within the ten (10) days next preceding the date of said hearing. At said hearing the applicant shall present a statement and adequate evidence, in such form as the County Planning Commission may require, showing:

(1) That there are special circumstances or conditions attached to the property upon which the proposed building, structure or other improvement is sought to be erected or placed.

(2) That the granting of the application is necessary for the preservation and enjoyment of substantial property rights.

The County Planning Commission shall thereupon make its decision upon the said application and shall report such decision to the Board of Supervisors within thirty (30) days after receipt of the application from said Board. In recommending the granting of any adjustment or variance under the provisions of this section the County Planning Commission shall designate such conditions in connection therewith as will, in its opinion, result in the adjustment or variance causing the minimum possible interference with the purposes of this ordinance and with the ultimate accomplishment of the objectives of the aforesaid Street and Highway Plan. In reporting its decision to the Board of Supervisors the County Planning Commission shall report its findings with respect thereto and all facts in connection therewith and shall specifically and fully set forth any adjustment or variance which is recommended and the condition designated in connection therewith.

Upon receipt of such report the Board of Supervisors shall by resolution make its decision upon the aforesaid application. If such decision shall approve the granting of an adjustment or variance, the permit applied for shall be issued, subject to the conditions designated by the County Planning Commission. In all cases in which adjustments or variances are granted under the provisions of this section the Board of Supervisors shall require such evidence and guarantees as, upon recommendation of the County Planning Commission, it may deem necessary that the conditions designated in connection with such adjustment or variance are being and will be complied with.

SEC. 11. The County Surveyor of said County is hereby instructed to cause to be recorded in the office of the County Recorder of said County a full, true and correct copy, duly attested, of the map of official plan lines which is contained in Section 8 of this ordinance and of each map of official plan lines which is hereafter added to this ordinance by amendment.

SEC. 12. The said County Surveyor is hereby further instructed to post permanent notices at intervals of not more than two thousand feet along each street and highway for which official plan lines have been established by the adoption of the map contained in Section 8 of this ordinance and/or for which official plan lines shall hereafter be established

by the addition of maps to this ordinance by amendment. Said notices shall be painted on wood or metal and shall each contain the following words (with the blanks appropriately filled):

"The width of this street" (or other appropriate designation) "is established as —— feet" (or "This highway is classified as a —— highway") "according to the Master Plan of the County of Santa Clara. Keep all buildings or other structures hereafter erected outside the lines of such established width" (or "of the established width for such highway") "as shown on O. P. L. Map No. ——, recorded in the office of the County Recorder, Hall of Records, San Jose, California, a copy of which is on file in the office of the County Surveyor, Hall of Records, San Jose, California.

"Ordinance No. ——, County of Santa Clara."

SEC. 13. If any section, sub-section, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors of the County of Santa Clara, State of California, hereby declares that it would have passed this ordinance and each section, sub-section, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, sub-sections, sentences, clauses or phrases be declared invalid.

SEC. 14. This ordinance shall take effect and be in force thirty days after its passage and approval.

. . . . . .

Approved Oct. 10, 1932.

F. Cook County, Ill. Form of Building Line Ordinance

Ordinance No. ——

AN ORDINANCE ESTABLISHING A BUILDING LINE ON —— AVENUE (STREET) BETWEEN —— STREET AND —— STREET IN THE CITY (VILLAGE) OF ——.

BE IT ORDAINED BY THE CITY COUNCIL (BOARD OF TRUSTEES) OF THE CITY (VILLAGE) OF ——:

Section I

That building lines be and the same are hereby established along lines parallel with and 50 feet easterly (northerly) of the center line of —— Avenue (Street) and along a line parallel with and 50 feet westerly (southerly) of the center line of —— Avenue (Street) between —— Street and —— Street in the City (Village) of ——, Cook County, Illinois.

Section II

That all ordinances or parts of ordinances in conflict herewith are hereby repealed insofar as they conflict herewith.

SECTION III

This ordinance shall be in full force and effect from and after its passage, approval and due publication.

PASSED by the City Council (Board of Trustees) of the City (Village) of ———— and deposited in my office this —— day of —— A.D. 1929.

City (Village) Clerk.

APPROVED by me this ——
day of —— A.D. 1929.

Mayor (President, Board of Trustees)

G. DUPAGE COUNTY, ILL. BUILDING SETBACK RESOLUTION

DUPAGE COUNTY BOARD OF SUPERVISORS

WHEREAS, In the County of DuPage, State of Illinois, outside of cities and villages and incorporated towns, there is now in effect a subdivision control resolution requiring, when land is subdivided, the dedication of 100 feet for street rights-of-way on all State Bond Issue Roads, State Aid Roads and Section line Roads, in accord with a Master Highway Plan; and

WHEREAS, There are in effect special resolutions requiring rights-of-way 200 feet wide on State Bond Issue Route 64 (North Avenue) outside of Elmhurst, State Bond Issue Route 54 from North Avenue south, State Aid Route No. 1 (Butterfield Road) and 75th Street; and

WHEREAS, The above named widths of right-of-way do not exist until the land is subdivided, and it is in the interest of public convenience and welfare to protect these potential rights-of-way against the encroachment of permanent improvements;

THEREFORE, BE IT RESOLVED, That a Building or Set-Back line be established 50.0 feet on either side of the center line on all of the above mentioned roads requiring a 100.0 foot right-of-way and a Building or Set-Back line 100.0 feet on either side of the center line on the above mentioned roads where a 200.0 foot right-of-way is required.

BE IT FURTHER RESOLVED, That signs be placed and notice given that these widths will be required.

BE IT FURTHER RESOLVED, That the establishment of said Building line does not constitute a taking of private property, but is a declaration of intention by the DuPage County Board of Supervisors to make adequate provision for public convenience, safety and welfare.

BE IT FURTHER RESOLVED, That a copy of this resolution be furnished the Illinois Department of Public Works and Buildings at Springfield and G. N. Lamb, District Engineer at Elgin, Illinois. Also to the Chicago Regional Planning Association, Burnham Building, Chicago, Illinois.

Adopted June 24, 1930
Wheaton, Illinois

H. Libertyville, Ill. Building Line Ordinance

An Ordinance establishing building lines along certain streets for purposes of future widening of said streets.

Be it ordained by the President and Board of Trustees of the Village of Libertyville, Illinois: That:

For the purpose of providing for the future widening of certain streets in accordance with the official town plan of the Village of Libertyville, no building shall be erected or altered so as to place its front building wall, exclusive of open steps and porches, nearer than fifty-four (54) feet from the center of the street along both sides of the following streets, to wit:

Milwaukee Avenue from Lake Street to Johnson Avenue; Milwaukee Avenue from Church Street to Rockland Road; Park Avenue from Stewart Avenue to Fifth Street, and on the south side of Park Avenue from Fifth Street to the east city limits; west Park Avenue in the business district near Butterfield Road; in the business district at the inter-section of Butterfield Road, extended, and Winchester Road.

It Is Further Ordained that on all streets designated for widening on the official town plan, in all residential and industrial districts, in unoccupied block[s], the building line established by the zoning ordinance shall be increased by a number of feet equal to one-half the difference between the existing width of such streets and the width designated on the official town plan.

This ordinance shall be supplementary to the zoning ordinance and building code of the Village of Libertyville, and violations of this ordinance shall be treated in the same manner as violations of the zoning ordinance and building code.

This ordinance shall be in full force and effect from and after its passage, approval and due publication.

I. Wichita, Kan. Special Area District Clause in Zoning Ordinance

SECTION 15. "S" AREA DISTRICT

In the "S" Area District the minimum dimensions of yards and the minimum lot area per family shall be as follows:

Rear Yard. The rear yard shall be the same as is required for the adjacent area district.

Side Yard. The side yard shall be the same as is required for the adjacent area district, Provided, in that portion of the "S" Area District in which part of the property fronting on one side of the street between two intersecting streets is zoned for "A" or "B" Use and the remainder of the block is zoned for "LC" or "C" Use, no side yard will be required excepting at the boundary line between a residential and commercial use district and adjacent to a street line, at which locations the side yard shall be the same as is required in the adjacent area district; Provided further that in any use district in which the "S" Area District is continuous along any street for one or more blocks, the side yard along such street shall be not less than thirty-eight (38) feet from the center line of said street.

Front Yard. The front yard shall be the same as is required for the adjacent area district, Provided, that in any use district in which the "S" Area District is continuous

along any street for one or more blocks, the front yard along such street shall be not less than thirty-eight (38) feet from the center line of said street, but no other provision of this ordinance shall require the erection or alteration of any building for any use at a greater distance than thirty-eight (38) feet from said center line of said street, and PROVIDED further that open porches, areaways and other appurtenances of like character shall not be constructed or altered within less than thirty-eight (38) feet of the center line of such street.

LOT AREA PER FAMILY. The lot area per family shall be the same as is required in the adjacent area district, PROVIDED that no building erected or altered for residential purposes in any portion of the "S" Area District will be required to provide more than one thousand one hundred sixty (1,160) square feet of lot area per family.

J. LOUISVILLE, KY. OFFICIAL MAP ORDINANCE

No. 105, Series 1933

City of Louisville and changing the map heretofore established by Ordinance approved February 8th, 1933, being ordinance No. 8, Series 1933.

Be it ordained by the Board of Aldermen of the City of Louisville:

SEC. 1. That the map accompanying this ordinance composed of 63 sheets or sections, bound together, each sheet or section designated "Official Map of the City of Louisville,' dated July 5th, 1933, showing the streets and highways heretofore laid out, be and the same is hereby established and declared to be and is the established and official map of the City of Louisville, and the map established by Ordinance approved February 8th, 1933, being ordinance No. 8, Series 1933, is changed to accord with the map hereby established,

SEC. 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SEC. 3. This ordinance shall take effect from and after its passage.

Approved Sept. 26, 1933.

K. AKRON, OHIO. AGREEMENT TO REMOVE PART OF BILLBOARD PERMITTED TO BE BUILT BEYOND BUILDING LINE AND WAIVER OF RIGHT TO CLAIM DAMAGES

Whereas, the Council, by Ordinance No. 8169, passed August 15, 1922, established building lines for the purpose of establishing front yards and regulating the location and alignment of buildings back of street lines for the purpose of maintaining appropriate open spaces and adequate distance between buildings on opposite sides of the street, in the interest of public health, safety, convenience and general welfare, and

Whereas, the General Outdoor Advertising Company, lease holder of premises the house number of which is 1160 South Main Street, Akron, Ohio, desires to erect a billboard at right angles to and beyond the 12 foot building line to within two (2) feet of the South Main Street line of said premises,

Now Therefore, in consideration of the issuance of a permit by the City of Akron, Ohio, for the construction of said billboard beyond the 12 foot building line in the position stated above, and for other valuable considerations, said General Outdoor Advertising Company hereby agrees to remove said billboard on said premises which extends beyond

said building within 30 days after being notified by the Director of Public Service that the adjacent building between the building line and said street line of South Main Street has been removed or ceases to extend beyond the 12 foot building line or within 30 days after being notified by the Director of Public Service that the city will remove said portion of said building adjacent to said premises, beyond said building line in connection with street widening proceedings or within 30 days after being notified by the Director of Public Service that a building has been erected on said premises back of said 12 foot building line; and said Outdoor Advertising Company further agrees to waive all rights to claim damages and hereby releases the City of Akron from payment of any and all damages or losses on account of the removal or destruction of the portion of said billboard on premises the house number of which is 1160 South Main Street which is beyond the 12 foot building line.

Said General Outdoor Advertising Company further agrees that, in case such portion of said billboard be not removed within 30 days from the date of notice by the Director of Public Service, said portion of said billboard may be caused to be removed by the City of Akron at the lessees' expense.

Said General Outdoor Advertising Company further agrees, in case of sale or sublease that it will incorporate in the deed or the lease the conditions and restrictions herein stipulated.

In witness whereof said General Outdoor Advertising Company, lease holder, has hereunto set its hands this —— day of February, 1933.

Witnesses:

_____ _____

_____ By_____

STATE OF OHIO } SS
SUMMIT COUNTY }

Before me a Notary Public for said County personally appeared the above General Outdoor Advertising Company, who acknowledged the signing of the foregoing instrument to be its free act and deed. In testimony whereof I have hereunto set my hand and affixed my official seal this —— day of February, 1933.

_____
Notary Public
My commission expires ————————, 19——.

L. PHILADELPHIA, PA. TYPICAL ORDINANCE AUTHORIZING CHANGING OF STREET LINES ON THE CITY PLAN

[In Effect a Building Line Ordinance]

AN ORDINANCE

To authorize the revision of the lines and grades of streets and the establishment of new streets over certain territory in the Fortieth Ward.

SEC. 1. THE SELECT AND COMMON COUNCILS OF THE CITY OF PHILADELPHIA DO ORDAIN, That the Department of Public Works (Board of Surveyors) be authorized to

revise the lines and grades of streets upon City Plan No. 104, bounded by Sixty-third street, Elmwood avenue, Seventieth street and the Chester Branch of the Philadelphia and Reading Railway, to revise the lines and establish the grades of streets upon City Plans Nos. 293 and 314, bounded by Woodland avenue, Cobbs Creek, Darby Creek, Ninetieth street, Tinicum avenue, Island road and Island avenue, and to establish the lines and grades of streets upon all that territory bounded by Sixty-third street, Chester Branch of the Philadelphia and Reading Railway, Seventieth street, Elmwood avenue, Island avenue, Island road, Tinicum avenue, Ninetieth street, Darby Creek, Bow Creek, Back Channel, County Line, Delaware river and the Schuylkill river, in the Fortieth Ward; and to lay out upon said plans such parkways, parking places and parks as may be necessary to complete the City plan within the areas described.

Approved the fourth day of October, A.D. 1916.

M. Philadelphia, Pa. Ordinance Amending the City Plan by Adding a New Street

An Ordinance

To authorize the revision of the lines and grades, the placing on the City Plan of Chestnut Hill–Bryn Mawr Road, the establishment of new streets, parkways, parking places and parks over certain territory upon City Plan No. 240 and portions of City Plans Nos. 295, 296 and 297, bounded by Schuylkill River, County Line, Ridge Avenue, Shawmont Avenue and Shawmont Avenue produced to Schuylkill River, including the boundary streets.

Sec. 1. The Council of the City of Philadelphia Ordains, That the Department of Public Works, Board of Surveyors, be authorized to revise the lines and grades, place on the City plan Chestnut Hill–Bryn Mawr Road, of the width of one hundred feet, establish new streets, parkways, parking places, and parks over certain territory upon City Plan No. 240 and portions of City Plans Nos. 295, 296 and 297, bounded by Schuylkill River, County Line, Ridge Avenue, Shawmont Avenue and Shawmont Avenue produced to Schuylkill River, including the boundary streets.

Approved the twenty-first day of February, A.D. 1927.

N. Philadelphia, Pa. Typical Ordinance Vacating a Street on the City Plan

An Ordinance

To strike from the City plan Viola street, from Fiftieth street to Fifty-first street; Leidy avenue, from Fifty-first street to Farson street; Farson street, from Viola street to Leidy avenue.

Sec. 1. The Council of the City of Philadelphia Ordains, That the Department of Public Works, Board of Surveyors, be, and is hereby authorized to strike from the City plan Viola street, from Fiftieth street to Fifty-first street; Leidy avenue, from Fifty-first street to Farson street; and Farson street, from Viola street to Leidy avenue: Pro-

VIDED, That within one year of the approval of this ordinance, The Collins and Aikman Corporation shall comply with the following conditions:

1. The payment into the City Treasury of six thousand three hundred and one (6,301) dollars and sixty-six (66) cents, to reimburse the City for its share of the municipal improvements made in Viola street, from Fifty-first street to Farson street.

2. The payment into the City Treasury of one thousand six hundred and thirty-five (1,635) dollars and ninety-two (92) cents, to reimburse the City for its share of the cost of the sewer constructed in Farson street, from Viola street to Leidy avenue.

3. The filing of a bond, in form satisfactory to the City Solicitor, indemnifying the City from any and all damages or claims for damages which may arise by reason of striking the said Viola street, Leidy avenue and Farson street from the City plan.

4. The filing of an agreement, in form satisfactory to the City Solicitor, confirming to the City of Philadelphia the right to maintain inviolate the sewers constructed in Viola street, from Fiftieth street to Fifty-first street, and Farson street, from Viola street to Columbia avenue, together with the right of ingress and egress thereto by its officers and employees, with the necessary equipment and materials for the necessary inspection and repairs to the said sewers.

5. The filing of an agreement, in form satisfactory to the City Solicitor, indemnifying the City of Philadelphia at all times hereafter against any damages or claims for damages which may, can or might arise by reason of any obstruction or failure of the sewer in Leidy avenue, between the easterly line of Fifty-first and the westerly line of Farson street, causing the same to overflow with the possible resultant damages to private property.

6. The filing of an agreement, in form satisfactory to the City Solicitor, agreeing to reimburse any public service corporation for the cost of removing and relocating any facilities it may have in the said Farson street, from Viola street to Leidy avenue.

7. The payment into the City Treasury of the sum of fifty (50) dollars for the publication of this ordinance.

APPROVED the twentieth day of April, A.D. 1932.

O. PHILADELPHIA, PA. TYPICAL ORDINANCE ESTABLISHING A MAPPED STREET

AN ORDINANCE

To authorize the placing upon the City plan of Gilbert street, from Washington Lane to Upsal street.

SEC. 1. THE COUNCIL OF THE CITY OF PHILADELPHIA ORDAINS, That the Department of Public Works, Board of Surveyors, be, and is hereby authorized to place upon the City plan Gilbert street, of the width of forty-five feet, from Washington lane to Upsal street: PROVIDED, That before the said streets shall be placed upon the City plan the owner or owners of the properties within the lines thereof shall, within one year from the approval of this ordinance, dedicate the bed of the same to the City on the lines and grades as confirmed by the Board of Surveyors, or shall indemnify the City against all damages or claims for damages which may arise from placing the said street on the City plan and its subsequent opening to the confirmed lines and grades.

APPROVED the sixth day of July, A.D. 1932.

P. Upper Darby Township, Pa. Ordinance Adopting Street Plan

Ordinance No. 386

An Ordinance approving and adopting the plan or map of the roads, streets and lanes laid out and opened or laid out, by the Township of Upper Darby, Delaware County, Pennsylvania, as shown on the plan prepared by and on file in the Department of Public Works, Upper Darby Township, and dated March 6, 1933.

The Commissioners of the Township of Upper Darby do ordain:

Sec. 1. That the plan or map of the Township of Upper Darby showing the roads, streets and lanes laid out and opened or laid out with such explanations as shall be necessary to the full understanding thereof, as prepared by and on file in the Department of Public Works of Upper Darby Township, dated March 6, 1932, be and the same is hereby approved, accepted and adopted, and it is hereby declared to be the official plan or map of the said Township of Upper Darby and the roads, streets and lanes heretofore opened and laid out as shown and marked thereon are hereby designated as public roads, streets and lanes of the said Township of Upper Darby, and such as have not heretofore been opened shall be opened as the Board of Commissioners may hereafter determined [*sic*] and nothing herein contained shall be construed as taking over or opening any road, street or lane not heretofore actually opened to public use by action of this board.

Sec. 2. That all roads, streets and lanes that have been heretofore opened in accordance with said plan or map are hereby ratified and approved and declared to be duly opened roads, streets and lanes of the Township of Upper Darby.

Sec. 3. That the said Board of Commissioners of the Township of Upper Darby and the President of the Board of Commissioners be and they are hereby authorized and directed to mark such plan or map "The official map or plan of the Township of Upper Darby, approved by the Board of Commissioners of the said Township of Upper Darby on the 7th day of March, A.D. 1933," and on such plan or map the President of the Board of Commissioners and the Chief of the Department of Public Works and the Township Secretary shall place their signatures and affix the seal of the Township thereto, together with the date of approval and the number of this ordinance.

Sec. 4. That said plan or map shall be kept by the Department of Public Works and shall be open to public inspection at all times.

Passed this 7th day of March, A.D. 1933.

Q. Dallas, Tex. Typical Building Line Resolution

A Resolution establishing a building line on South Pearl Street between Gibson and Corinth streets.

Be it resolved by the City Council of the City of Dallas:

Sec. 1. The map or plat hereto attached is adopted for the purpose of establishing and delineating a building line on South Pearl Street between Gibson and Corinth Streets. The line referred to herein as a building line indicates the proposed establishment of the line between the street and private property after South Pearl Street has been widened, extended and improved between the points mentioned, and the purpose of the adoption

of this improvement, print and map is to indicate the line beyond which property owners should not construct permanent improvements, so as not to interfere with the future widening and extension of said South Pearl Street.

SEC. 2. The establishment of this building line and the indication by the City of the proposed plan for the opening, widening and extension of South Pearl Street shall not be deemed a taking or appropriation of the property of the persons upon which said line is located or indicated, but said print or plat does represent the plan or proposal for the opening, widening and extension of South Pearl Street from Gibson to Corinth Streets, and for the accomplishment of said improvement it may be necessary at some future time to acquire the property between the building line as established herein and the present or existing line between property and the public thoroughfare.

SEC. 3. This resolution shall take effect from and after its passage as in the Charter in such cases is made and provided.

APPENDIX V

PERSONS WHO FURNISHED MAJOR INFORMATION FOR THIS STUDY

Alexander, H. W., Louisville, Ky.
Ames, John, Ames, Iowa
Ascher, Charles, Chicago, Ill.
Ashman, Charlotte S. (Mrs. G. C.), Peoria, Ill.
Auger, Tracy B., Dearborn, Mich.
Aumack, H. F., Spokane, Wash.

Bartholomew, Harland, St. Louis, Mo.
Bassett, Edward M., New York City
Baum, H. J., Altoona, Pa.
Beers, W. D., Salt Lake City, Utah
Behrens, Ray E., Milwaukee, Wis.
Bennett, Charles B., Milwaukee, Wis.
Bergman, Paul B., Islip, N. Y.
Bettman, Alfred, Cincinnati, Ohio
Bigger, Frederick, Pittsburgh, Pa.
Blanchard, R. W., Evansville, Ind.
Blucher, Walter H., Detroit, Mich.
Bolton, James, Richmond, Va.
Bonner, J. Franklin, Rochester, N. Y.
Brandes, F. C., White Plains, N. Y.
Brinkman, L. F., Los Angeles, Cal.
Brockway, P. L., Wichita, Kan.
Brown, Carey H., Washington, D. C.
Brown, F. L., Scranton, Pa.
Brown, W. McK., East St. Louis, Ill.
Buckley, Thomas, Philadelphia, Pa.
Burnside, Lewis E., Sharon, Pa.

Carlson, Floyd A., Kenosha, Wis.
Chapman, H., London, England
Clark, E. S., Kalamazoo, Mich.
Clark, Roscoe N., Hartford, Conn.
Cockrill, L. P., Memphis, Tenn.
Comey, Arthur C., Cambridge, Mass.
Conley, Charles E., Cleveland, Ohio
Coombs, Thomas, Los Angeles, Cal.
Costello, James W., Newark, N. J.
Cowden, E. C., Harrisburg, Pa.
Crane, Jacob L., Jr., Chicago, Ill.

De Boer, S. R., Denver, Colo.
Dent, E. A., Washington, D. C.
Dingle, J. H., Charleston, S. C.
Dodge, A. T., Manchester, N. H.
Downs, Myron D., Cincinnati, Ohio

Eddy, Bernard B., Montclair, N. J.
Elwood, P. H., Jr., Ames, Iowa

Fisher, Charles F., Akron, Ohio

Goodridge, Harry, Berkeley, Cal.
Gray, George Herbert, New Haven, Conn.
Green, Harry H., Worcester, Mass.
Guyn, J. White, Lexington, Ky.

Haines, C. D., Jefferson City, Mo.
Haldeman, B. Antrim, Philadelphia, Pa.
Hall, Bryant, Los Angeles, Cal.
Hare, S. Herbert, Kansas City, Mo.
Harrell, C. A., Binghamton, N. Y.
Hartman, Edward T., Boston, Mass.
Hartzog, Justin R., Cambridge, Mass.
Haug, E. M., Berkeley, Cal.
Heimbuecher, Walter A., University City, Mo.
Heiskell, J. N., Little Rock, Ark.
Herlihy, Elisabeth M., Boston, Mass.
Herrick, Charles E., Bayonne, N. J.
Herrold, George H., St. Paul, Minn.
Heydecker, Wayne D., New York City
Hiebel, Leonard, Akron, Ohio

Hoelscher, L. W., Fort Worth, Tex.
Hubbard, Henry V., Cambridge, Mass.

Ingham, Joseph F., Harrisburg, Pa.

Judson, H. D., St. Joseph, Mo.

Kincaid, H. E., San Antonio, Tex.
Kingery, Robert, Chicago, Ill.
Koch, Oscar H., Dallas, Tex.
Koenig, Russell O., Saginaw, Mich.
Koester, Edwin F., Wilmington, Del.

Lee, D. Collins, Covington, Ky.
Lewis, Harold M., New York City
Lingley, Ralph G., Worcester, Mass.
Logan, Thomas J., Fall River, Mass.

Manning, Warren H., Cambridge, Mass.
Marak, W. H., Little Rock, Ark.
Marshall, W. C., Milford, Conn.
McClure, C. A., Portland, Ore.
McNamara, Katherine, Cambridge, Mass.
Meade, John E., Providence, R. I.
Mebus, Charles F., Glenside, Pa.
Menhinick, Howard K., Cambridge, Mass.
Mills, Earl O., St. Louis, Mo.
Moot, Richmond D., Schenectady, N. Y.
Morse, William P., Newton, Mass.

Nelson, Elmer K., Laramie, Wyo.
Nettleton, Edward S., New Haven, Conn.
Noble, Walter E., Fall River, Mass.
Nolen, John, Jr., Washington, D. C.
Nussbaumer, Newell L., Buffalo, N. Y.

Olson, Herman E., Minneapolis, Minn.
Olson, Howard R., Chicago, Ill.
Oram, Captain Hugh P., Washington, D. C.

Parker, E. E., Madison, Wis.
Penfield, Wallace C., Santa Barbara, Cal.
Philipp, Otto K., Flint, Mich.
Pomeroy, Hugh R., Palo Alto, Cal.

Reeder, William W., Upper Darby, Pa.
Restall, C. H., Springfield, Mass.
Rick, Glenn A., San Diego, Cal.
Robertson, Anne, New Orleans, La.
Robinson, D. L., Jr., Dallas, Tex.
Root, Irving C., Silver Spring, Md.

Scott, Campbell, New York City
Segoe, L., Cincinnati, Ohio
Sheridan, Lawrence V., Indianapolis, Ind.
Shurtleff, Flavel, New York City
Smith, Russell B., Greenwich, Conn.
Steeg, H. B., Indianapolis, Ind.
Stevenson, C. C., Boise, Idaho

Taylor, E. S., Chicago, Ill.
Taylor, W. H., 3d, Norfolk, Va.
Tilton, L. Deming, Santa Barbara, Cal.
Tippee, John, Des Moines, Iowa

Varney, Henry A., Brookline, Mass.
Vedder, A. L., Rochester, N. Y.

Wallace, W. Lloyd, Baltimore, Md.
Warriner, T. R., Cedar Rapids, Iowa
Weiss, T. F., Oklahoma City, Okla.
Wells, Alden, Hartford, Conn.
Wheeler, Ida Lee, Lexington, Ky.
Whitten, Robert, New York City
Williamson, Roy L., Raleigh, N. C.
Winey, Harold E., Dayton, Ohio
Wipfler, M. W., Elmira, N. Y.
Woodruff, Joseph T., Stratford, Conn.
Woolley, G. G., Salt Lake City, Utah

INDEX

The titles of books, periodicals, and cases at law appear in italics.